

Proposed Ordinance 2025-02: Probate

Tribal Council member Doreen Blaker introduces the following ordinance:

An Ordinance of the Keweenaw Bay Indian Community adopted under the authority of the Constitution and By-Laws of the Keweenaw Bay Indian Community to provide rules for the disposition of a deceased person's estate with or without a will. This Ordinance will be codified as Title 27.

TITLE 27
PROBATE

CHAPTER ONE

DEFINITIONS AND GENERAL PROVISIONS

§XX.101. Definitions.

As used in this Title, the following words and phrases shall have the following meanings:

1. "Community" means the Keweenaw Bay Indian Community.
1. "Decedent" means a deceased person who died Testate or Intestate.
1. "Degree of Kinship" means the relationship between the Decedent and the surviving relative. The degree is determined by counting upward from the Decedent to the nearest common ancestor and then downward to the surviving relative, the Degree of Kinship being the sum of these two counts.
1. "Devisee" means a person or entity that receives property under a Will.
1. "Dwelling" means the building or group of buildings, or apartment, occupied by the surviving Spouse or children of the Decedent at the time of the Decedent's death.
1. "Eligible Heir(s)" means any of a Decedent's children, grandchildren, great-grandchildren, full siblings, half-siblings by blood, and Parents, any of whom who are Indian; lineal descendants within two degrees of consanguinity of an Indian.
1. "Estate" means all of the assets and liabilities of the Decedent at the time of death, but it does not include any Trust or Restricted Property of the Decedent.
1. "Indian" means Any person who is a member of any Indian Tribe, is eligible to become a member of any Indian Tribe
1. "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.
1. "Intestate" means a person who dies without leaving a Will or the condition of dying without

leaving a Will.

1. "Issue" means all the lineal descendants of the Decedent, including all children lawfully adopted by the Decedent. Children who are considered adopted by the Decedent by custom shall not be considered Issue of the Decedent unless lawfully adopted by the Decedent.

1. "Letters of Administration" means a formal document Issued by the Tribal Court appointing a person Personal Representative of an Estate, regardless of whether the Decedent died Testate or Intestate.

1. "Net Estate" means the real and Personal Property of the Decedent, exclusive of exempt property, the family allowance, and enforceable claims against and debts of the Decedent or the Estate.

1. "Nonprobate Asset" means those rights and interests of a person having beneficial ownership of an asset that passes on the person's death under a written instrument or arrangement other than the person's Will. The term includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, individual retirement account or bond, or similar document.

1. "Title" means the Probate Title of the Keweenaw Bay Indian Community and all amendments hereafter made to this Title.

1. "Parent" means the biological or lawful adoptive father or mother of a person. It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.

1. "Personal Property" means any property that is not included in the definition of Real Estate.

1. "Personal Representative" means the person appointed by the Tribal Court to administer the Estate of a Decedent according to this Probate Title, regardless of whether the Decedent died Estate or Intestate, and may include an administrator nominated by the Decedent's Will, a person appointed at the request of an interested party, or the Public Administrator.

1. "Public Administrator" means the employee of the Community appointed by the Tribal Court as a Personal Representative to administer Estates where the appointment of another Personal Representative is not sought, or where no other suitable person is willing and available to serve.

1. "Real Estate" means all interests and Estates in the land, including leasehold interests and

improvements to land, such as houses or other buildings that 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 located on Tribal fee or trust property shall be considered Personal Property for purposes of this Title. All other mobile and modular homes shall be considered Real Estate for purposes of this Title.

1. "Representation" means a method of determining distribution in which the takers are in unequal degrees of kinship to the Decedent and is accomplished as follows: after first determining who of those entitled to share in the Estate are in the nearest Degree of Kinship, the Estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the Decedent and who are in the nearest Degree of Kinship and the number of persons in the same Degree of Kinship who died before the Decedent, but who left Issue surviving the Decedent; each share of a deceased person in the nearest degree shall be divided among those of the deceased person's Issue who survive the Decedent and have no ancestor then living who is in the line of relationship between them and the Decedent, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the Decedent.

1. "Reservation" means all lands within the original confines of the L'Anse Federal Indian Reservation and all other lands added to it by Executive Order, federal statute, or other legal action.

1. "Slayer" means any person who participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the Decedent.

1. "Spouse" means a party to a marriage recognized under Title Seven of the Tribal Code.

1. "Testate" means a person who dies leaving a Will or the condition of dying after leaving a Will.

1. "Testator" means a person who makes or has made a Will.

1. "Tribal" or "Tribally" means relating to the Community.

1. "Tribal Court" means the Tribal Court of the Keweenaw Bay Indian Community.

1. "Trust or Restricted Property" means any property for which the United States holds the title in trust for the benefit of an individual Indian or Indian Tribe or any property whose title is held by an Indian or Indian Tribe, but which cannot be alienated or encumbered without the consent of the Secretary of the Interior.

1. "Trust Personalty" means all funds and securities of any kind that are held in trust in an individual Indian money account or otherwise supervised by the Secretary.

1. "Will" means an instrument by which a person makes a disposition of his or her real or Personal Property to take effect after the person's death and which, by its own nature, is revocable during the person's lifetime.

§XX.102. Authority.

This Title is enacted pursuant to Article VI of the Constitution and By-Laws of the Keweenaw Bay Indian Community.

§XX.103. Repeal of Prior Laws.

All chapters and sections of the Tribal Code of the Community that pertain to the probating of Estates in the Community's Tribal Court, if any, that are inconsistent with this Title and in effect as of the date that this Title becomes effective, are now repealed.

§XX.104. Effective Date.

This Title shall take effect on _____. This Title shall not affect the validity or terms of Wills executed before the effective date.

§XX.105. Severability.

If any provision of this Title or the application thereof is judicially determined to be invalid by a court of competent jurisdiction, the remaining provisions of this Title and other applications of such provision shall not be affected thereby.

§XX.106. Reference to Foreign Law.

The Tribal Court is authorized to refer to foreign law, including laws of other tribes and states, federal law, Anglo-Saxon common law, and uniform or model laws for assistance in resolving Issues of probate and inheritance law on which this Title is silent.

§XX.107 Interpretation

This Title shall be liberally construed and applied to meet the following objectives:

- (A) To ensure that the property of Decedents is passed on to the rightful heirs or beneficiaries
- (B) To comply with the Decedent's wishes as much as possible.
- (C) To comply with Tribal customs and traditions.
- (D) To provide a simple, efficient, and inexpensive method for probating the Decedent's

property.

(E) To prevent the transfer of land out of Tribal ownership and control.

(F) To ensure that the rights of creditors of Decedents are protected to the fairest extent possible.

(G) To promote and further the Community's inherent right to self-governance.

CHAPTER TWO

PERSONS AND PROPERTY SUBJECT TO TITLE

§XX.201. Persons and Property Subject to Title – Domicile Presumed.

This Title applies to 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, with regards to Real Estate that is located within the Reservation or otherwise subject to the jurisdiction of the Community. In addition, it applies to all Personal Property of such persons to the extent they are domiciled within the Reservation. An enrolled Community member shall be presumed to be domiciled within the Reservation, regardless of residence elsewhere, without proof of domicile in another location. This Title does not apply to Trust or Restricted Property.

§XX.202. Jurisdiction of Tribal Court.

The Tribal Court shall have all authority necessary to distribute a Decedent's Estate, including the ability to take evidence on 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 Title. The Tribal Court shall have the broadest possible authority to execute its duties and responsibilities under this Title. It shall have the authority to probate all Estate interests subject to this Title to the extent that such Estate does not come within the exclusive jurisdiction of the Secretary of the Interior of the United States.

§XX.203. Reserved.

§XX.204. Reserved.

§XX.205. Restrictions on Inheritance of Real Estate

Only persons who meet the definition of Indian or Eligible Heir shall take by Intestate succession any interest in Real Estate that a deceased member of the Community has leased from the Community except that a surviving Spouse who is not a member of, or eligible for enrollment in a federally recognized Indian Tribe, or who does not otherwise meet the definition of Indian or Eligible Heir may receive by inheritance or devise the use for the life of Real Estate of the deceased.

CHAPTER THREE
INTESTATE SUCCESSION

§XX.301. Intestate Succession.

Subject to the limitations provided in §§ XX.204 and XX.205, the Net Estate of a person dying Intestate shall descend as provided in this section.

§XX.302. Surviving Spouse.

(A) The Intestate share of the surviving Spouse shall be one of the following:

- (1) If there is no surviving Issue or Parent of the Decedent, the entire Intestate Net Estate.
- (2) If there is a surviving Issue of the Decedent, one-half of the Intestate Net Estate.
- (3) If there is no surviving Issue of the Decedent, but the Decedent is survived by one or both of his or her Parents, three-quarters of the Intestate Net Estate.

(B) Reserved.

§XX.303. Heirs other than Surviving Spouse.

(A) Any part of the Intestate Net Estate that does not pass to the surviving Spouse under §XX.302, or the entire Intestate Net Estate if there is no surviving Spouse, shall pass in the following order to the following individuals who survive the Decedent.

(1) To the Issue of the Decedent.

(a) If the Issue is of the same Degree of Kinship to the Decedent, the Issue shall take equal.

(b) If the Issue is of unequal Degree of Kinship to the Decedent, then the Issue of a more remote Degree of Kinship shall be taken by Representation.

(2) If there is no surviving Issue of the Decedent, to the Decedent's Parents equally if both survive or to the surviving Parent.

(3) If there is no surviving Issue or Parent of the Decedent, to the surviving Issue of the Parent of the Decedent. If the surviving Issue of the Decedent's Parents is all in the same Degree of Kinship to the Decedent, they shall take it equally. If they are of unequal degrees, then those of a more remote degree shall be taken by Representation.

(4) If there is no surviving Issue, Parent, or descendant of a Parent, but the Decedent is survived by one or more grandparents or descendants of grandparents, one-half of the Intestate Net Estate passes to the Decedent's paternal grandparent equally if both survive, or to the surviving paternal grandparent, or to the descendants of the Decedent's paternal grandparents or either of them if both are deceased, the descendants taking by Representation; the other one-half passes to the Decedent's maternal relatives in the same manner. If there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire Net Estate passes to the Decedent's relatives on the other side in the same manner as the other half.

§XX. 304 Reserved.

§XX.305. Escheat for Want of Heirs.

Whenever any person dies, leaving property subject to the jurisdiction of the Community, and not being survived by any person entitled to the same under this Title, such property shall be designated as escheat property and shall pass to the Community.

§XX.306. Individuals in Gestation.

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.

§XX.307. Natural and Adoptive Parent.

(A) Except as provided in paragraph (B), for purposes of Intestate succession by, through, or from an individual, an individual is the child of his or her natural Parent, regardless of their marital status.

- (B) An adopted individual is the heir at law of the adopting Parent or Parent and, after the order of adoption, shall no longer be an heir by law of a Parent whose rights have been terminated.
- (C) An adopted individual shall inherit from all other relatives of an adoptive Parent as though the adopted individual was the natural child of the adoptive Parent, and the relatives shall inherit from the adopted individual as if they were the natural relatives of the adopted individual.

CHAPTER FOUR

WILLS

§XX.401. Who May Make a Will.

An individual of sound mind who is eighteen years of age or older, an emancipated minor, or a child's Parent may make a Will.

§XX.402. Requirements of Will.

Every Will shall be in writing and signed by the Testator or some other person under the Testator's direction and in the presence of the Testator. The Will shall be attested by two or more 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 his direction or request; provided, however, that a Will, executed outside the Reservation, in the mode prescribed by applicable law, either of the place where executed or of the Testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of the Community.

§XX.403. Revocation of Will.

(A) A Will, or any part thereof, is revoked by:

- (1) A subsequent valid written Will that expressly revokes the prior Will or part of the prior Will or is inconsistent with the prior Will; or
- (2) Being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the Will, by the Testator or by another person in the Testator's presence and at the Testator's direction.

§XX.404. Revocation by Divorce or Annulment.

(A) If, after executing a Will, the Testator is divorced or the Testator's marriage is annulled in any jurisdiction, the divorce or annulment revokes any disposition 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 administrator, trustee, conservator, or guardian, unless the Will expressly provides otherwise.

(B) Property prevented from passing to a former Spouse pursuant to paragraph (A) passes as if the former Spouse failed to survive the Testator. Provisions of a Will that are revoked solely by this subsection §XX.404 are revived by the Testator's remarriage to the former Spouse.

§XX.405. Where a Beneficiary of a Will Fails to Survive the Testator.

Unless provided otherwise in the Will, if a beneficiary under a Will who is a relative of the Testator fails to survive the Testator, the surviving Issue of the deceased beneficiary shall take the beneficiary's share. If the surviving Issue are all in the same Degree of Kinship to the predeceased Testator, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by Representation with respect to such predeceased beneficiary. A Spouse is not a relative under the provisions of this subsection §XX.405.

§XX.406. Life Estate – Remainders.

If any person, by last Will or by the operation of Tribal law, shall devise any Real Estate for any person for the term of such person's life, such devise vests in the Devisee a life estate, and it shall revert to the heirs at law of the Testator after the Devisee's death unless the remainder is specially devised.

§XX.407. Contribution Among Devisees and Legatees.

If the Testator devises property to a person and the property is taken in execution for the payment of the Testator's debts, then all the other Devisees and legatees shall refund their proportional part of such loss to such person from whom the property has been taken.

§XX.408. Intention and Rules of Construction.

(A) The intention of a Testator, as expressed in the Testator's Will, shall control the legal effect

of the Testator's dispositions unless prohibited by applicable law.

(B) The following rules of construction shall apply unless a contrary intent is clear in the Will:

(1) A Will shall be construed to pass all property that the Testator owns at the time of his or her death, including property acquired after the execution of the Testator's Will, unless the language of the Will makes clear the Testator's intention was otherwise.

(2) A Devisee or legatee who does not survive the Testator by 120 hours is treated as if he or she predeceased the Testator, unless the Will provides otherwise.

§XX.409. Spouse's Right to Elective Share.

If a married person dies and leaves a valid Will in which the Spouse is to receive less than one third of the Net Estate, the surviving Spouse has a right to elect to take an elective share of one third of the Net Estate of the Testator. If, after the elective share is distributed to the surviving Spouse, the remaining Estate is insufficient to satisfy the bequests and devises in the Will, each bequest and devise shall be proportionally reduced.

§XX.410. Omitted Children.

(A) If a Testator fails to provide in his or her Will for any of the Testator's children living or born or adopted after the execution of the Will, the omitted child receives a share in the Estate equal in value to that which the child would have received if the Testator had died Intestate unless it appears either from the Will or from other clear and convincing evidence that the failure was intentional.

(B) In satisfying a share provided by this subsection §XX.410, the bequests and devises made by the Will abate as provided in Section 12.

§XX.411. Omitted Spouse.

(A) If a Testator fails to provide by Will for the Testator's Spouse to whom the Testator was Married at the time of the execution of the Will or who married the Testator after the execution of the Will, the omitted Spouse shall receive the same share of the Estate that he or she would have received if the Decedent left no Will unless it appears from the Will that the omission was intentional.

(B) In satisfying a share provided by this subsection §XX.411, the bequests and devises made by

the Will abate as provided in Section 12.

§XX.412. Reserved.

§XX.413. Reserved

§XX.414. Reserved

§XX.415 Reserved

§XX.416. Reserved.

§XX.417. Self-Proved Will

A Will shall be considered a self-proved, unless contested, and may be admitted to probate without the testimony of two (2) disinterested witnesses. Non-self-proved Wills, codicils, or revocations will only be applicable to non-trust property and only recognized in the Tribal Court.

A Will witnessed by two (2) disinterested witnesses may be made self-proved, by the acknowledgment thereof by the Testator and the affidavits of the witnesses, each made before a notary public, under official seal, attached or annexed to the Will in form and content.

(a) A Testator's affidavit must substantially contain the following content, and it must be signed by the Testator and notarized:

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.

(b) Each attesting witness's affidavit must substantially contain the following content: the witness must sign the affidavit, and the affidavit must be notarized.

We, _____ and _____, swear or affirm under penalty of perjury that on the _____ day of _____, 20____, _____, a member of the Keweenaw Bay Indian

Community, 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.

CHAPTER FIVE FAMILY SUPPORT

§XX.501. Dwelling Exemption.

If the surviving Spouse or children of the Decedent occupy a Dwelling which is part of the Estate and the Dwelling are necessary for the welfare and protection of the surviving Spouse or children, the Tribal Court may, by order, set aside such Dwelling for the benefit of the surviving Spouse or children as a homestead for a period not to exceed five years; provided that in case of special hardship or emergency, the Tribal Court may, by order, extend such term from year to year thereafter. The Tribal Court may also set aside such sums from the Estate as the Tribal Court may deem necessary for maintenance and upkeep of the Dwelling. Any heir or heirs or creditors of the Decedent shall have the opportunity to appear before the Tribal Court and protest any order made by the Tribal Court with regard to this subsection §XX.501.

§XX.502. Exempt Property.

(A) The Decedent's surviving Spouse is entitled to household furniture, automobiles, furnishings, appliances, and personal effects from the Estate up to a value not to exceed \$10,000.00 more than the amount of any security interests to which the property is subject. If no surviving Spouse exists, the Decedent's children are entitled jointly to the same value.

(B) If encumbered assets are selected and the value in excess of security interests, plus that of other exempt property, is less than \$10,000.00, or if there is not \$10,000.00 worth of exempt property in the Estate, the Spouse or children, as applicable, are entitled to other assets of the Estate, if any, to the extent necessary to make up the \$10,000.00 value. 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 assets to make up a deficiency of exempt

property abates as necessary to permit payment of all of the following in the following order:

- (1) Administration costs and expenses.
- (2) Reasonable funeral and burial expenses.
- (C) The rights under this subsection §XX.502 are in addition to a benefit or share passing to the surviving Spouse or children by the Decedent's Will, unless otherwise provided, by Intestate succession or by elective share.

§XX.503. Support Pending Administration of Intestate Estate or Probate of Wills.

(A) During the period of administration of Intestate Estates or probate of Wills, the surviving Spouse of a Decedent may petition the Tribal Court for an award from the Estate to provide for basic maintenance and support of the surviving Spouse and the Decedent's children who, during the aforementioned period, live in the same household as the surviving Spouse. If no surviving Spouse exists, the Decedent's minor children may petition for such an award.

(B) Any award made and the amount of such award to the surviving Spouse and the Decedent's children is in the Tribal Court's discretion. The Tribal Court may consider, in addition to any other relevant factors:

- (1) The petitioner's present and reasonably anticipated future needs during the pendency of any proceedings in Tribal Court with respect to basic maintenance and support.

- (2) The resources available to the petitioner and the petitioner's dependents and the resources reasonably expected to be available to the petitioner and the petitioner's dependents during the pendency of any proceedings, including income related to present or future employment and benefits flowing from the Decedent's Estate.

- (3) If the petitioner is the surviving Spouse, the duration and status of the marriage of the Decedent to the petitioner at the time of the Decedent's death.

(C) The award has priority over all other claims made against the Estate. Unless otherwise ordered by the Tribal Court, the assets shall abate in satisfaction of the award in accordance with Section 12.

(D) If any property awarded under this subsection §XX.503 has been purchased on a contract or is subject to any encumbrance, it will continue to be subject to any such contract or encumbrance. All other property awarded and cash paid under this subsection is immune from all debts, including judgments and judgment liens, of the Decedent and of the surviving Spouse

existing at the time of death of the Decedent.

(E) If an award provided by this subsection will exhaust the Estate, the Tribal Court, in the order of award, shall order the Estate closed, discharge the Personal Representative, and exonerate the Personal Representative's bond, if any.

§XX.504. Summary Probate of Exempt Estates.

(A) An Estate having an appraised value which does not exceed \$5,000 and which is to be inherited by a surviving Spouse or minor children of the Decedent shall be exempt from the claims of all general creditors, and the probate thereof may be summarily concluded as provided in this subsection.

(B) Upon petition of the Personal Representative, the Tribal Court shall enter an order stating that it appears, from the inventory and appraisal filed with the Tribal Court pursuant §XX.610, that the whole Estate does not exceed \$5,000 and that such Estate is to be inherited by the surviving Spouse or minor children of the Decedent and shall set a date and hour for hearing objections of any interested persons, if any, why the whole Estate should not be declared to be exempt from the claims of all general creditors and distributed to the surviving Spouse or minor children of the Decedent. Notice of such hearing shall be given by posting a true copy of such order in the Tribal Center of the Community and by sending a true copy of such order by certified mail to all persons known to the Personal Representative to be an heir, Devisee or legatee of the Decedent. Such notice shall be posted or mailed not less than ten days before the time set for such hearing. On or before the time set for such hearing, the Personal Representative shall file his or her affidavit with the Tribal Court indicating compliance with this requirement of giving notice.

(C) If, upon such hearing, the Tribal Court finds that such Estate is an exempt Estate, the Tribal Court shall enter an order directing the Personal Representative to distribute such Estate to the surviving Spouse or the minor children of the Decedent as set forth in the order and provide that no further proceedings are necessary and that, upon distributing the distributive share or shares of such Estate to those entitled thereto and filing receipts therefore, the Estate shall be closed, and the Personal Representative shall be discharged.

CHAPTER SIX

PROBATE PROCEEDINGS

§XX.601. Duty to Present Will for Probate.

Any person having custody or control of a Will shall, within thirty days after receiving knowledge of the death of the Testator, deliver a copy of said Will to the Tribal Court. If the Will also includes Trust or Restricted Property, the person with custody or control over it shall deliver a copy of said Will to the agency or BIA regional office nearest to where the Decedent was enrolled.

§XX.602. Initiation of Probate Proceedings.

(A) At any time after the death of a person subject to this Title, any person meeting the qualifications required of the Personal Representative of the Decedent's Estate or the Community may initiate the probate of the Decedent's Estate by filing a petition for probate with the Tribal Court. The petition shall, at a minimum, contain the following information:

- (1) The Decedent's name and the Decedent's date of death.
- (2) The Decedent's enrollment status, i.e., enrolled with the Community, eligible for enrollment with the Community, or enrolled in another federally recognized Indian Tribe.
- (3) The names, ages, and addresses of the Decedent's surviving family to the extent that such information is known to the petitioner.
- (4) Whether the Decedent left a Will, and, if so, the names and addresses of the beneficiaries under the Will.
- (5) 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, that are not subject to probate in Tribal Court, including, but not limited to, any interests in Trust or Restricted Property. This description shall also include an estimated value of the real property and Personal Property in the Estate.
- (6) A statement of whether any probate proceedings are pending in any other jurisdiction, and, if so, the name and address of the Personal Representative appointed in such proceedings.
- (7) A request for appointment of a Personal Representative and a statement of the qualifications of the proposed Personal Representative.

(8) A request for approval of the Decedent's Will or a request that the Tribal Court find that the Decedent died without a valid Will, as applicable.

(9) A verification under oath or penalty of perjury signed by the petitioner that the petitions contents are true and correct.

(10) The Decedent's last address.

(11) The basis for jurisdiction before the Court.

(B) Together with the petition or as soon as the petitioner obtains them, the petitioner shall file with the Tribal Court the following documents:

(1) A certified copy of the Decedent's death certificate. In the absence of a death certificate, an individual who is absent for a continuous period of not less than six years, during which he has not been in contact with those who knew him, is presumed to be dead.

(2) The original or a true and correct copy of any Will found or document alleged to be the Decedent's Will. 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.

§XX.603. Personal Representative.

(A) The Tribal Court shall appoint a Personal Representative to administer the Estate after receiving a Petition that satisfies Section XX.602. The Personal Representative shall be a competent adult, and preference shall be given, if such person is otherwise qualified, to the person named in the Will as such, followed by the surviving Spouse, child of the Decedent over 18 years of age with preference given in descending order of age, other blood relatives in order of their closeness of relationship to the Decedent, any adult Tribal member, or any adult person.

(B) If the person so appointed shall fail for more than forty days after the death of the Decedent to initiate probate proceedings with the Tribal Court, or if it appears to the satisfaction of the Tribal Court that there is no next of kin of the Decedent, or they waive their right, or if no suitable person is available and willing to serve as Personal Representative, then the Tribal Court may appoint a Public Administrator to administer the Estate.

(C) Persons who have been convicted of a felony or of a misdemeanor involving moral turpitude may not be appointed as Personal Representatives or Public Administrators. When a person to whom Letters of Administration have been Issued becomes disqualified to act as a Personal Representative or Public Administrator because of such a conviction, the Tribal Court shall

revoke the person's Letters of Administration.

(D) A nonresident may be appointed as a Personal Representative or Public Administrator if the nonresident appoints an agent who is a resident of the Reservation or who is an attorney of record of the Estate upon whom service of all papers may be made.

§XX.604. Powers and Duties of Personal Representative.

(A) The Personal Representative shall have the following powers and duties:

- (1) To take possession and control of all the Decedent's assets subject to the probate jurisdiction of the Tribal Court, and to preserve such assets for the benefit of the Estate.
 - (2) To give all notices to family members, heirs, beneficiaries, government agencies, or creditors as required or allowed by this Title.
 - (3) To act in a fiduciary capacity in the name of the Estate, subject to applicable orders of the Tribal Court, to settle any claim against the Estate, collect any debts owed to the Estate, and initiate or defend any litigation involving the Estate.
 - (4) To administer, in a fiduciary capacity, the affairs of the Estate to ensure that the Estate is preserved and distributed in accordance with the Decedent's directions expressed in his or her Will, or in the absence of such a Will, in accordance with the rules of Intestate succession set out in this Title.
 - (5) To exercise any power granted by the Decedent's Will or by order of the Tribal Court.
 - (6) To avoid any conflict of interest between his or her personal interests and the interests of the Estate by always placing the interests of the Estate ahead of his or her personal interest.
- (B) The Personal Representative shall serve without bond unless a bond is required by the Tribal Court, or by the terms of Decedent's Will.

§XX.605. Hearing and Order Initiating Probate.

- (A) Within thirty days of filing a petition for probate, the Tribal Court may hold a hearing during which the court shall review the sufficiency of the petition, examine the petitioner under oath, and determine whether the Decedent died Testate or Intestate.
- (B) At the hearing, the Tribal Court shall take evidence as to the validity of any Will and the qualifications of the petitioner or other person to serve as Personal Representative. In the absence of an original Will, the Tribal Court may permit a true and correct copy of a Will to be probated.

(C) After the hearing, the Tribal Court shall either enter an order initiating probate of the Decedent's Will or conclude that the Decedent died Intestate and identify the Decedent's heirs at law, or it shall dismiss the petition for probate. Except in the event of a contest of a Will pursuant to Section 7, such order shall be conclusive.

(D) The Tribal Court may enter an order initiating probate of the Decedent's Will or conclude that the Decedent died Intestate and identify the Decedent's heirs at law or dismiss the petition for probate without a hearing if the Tribal Court reasonably concludes based on the petition for probate and the evidence included therein that a hearing is unnecessary. The Tribal Court may consider whether the petition includes an original Will or includes proof that no one is contesting who is legally entitled to inherit from the Estate.

§XX.606. Letters of Administration.

(A) Following the conclusion of the hearing and order initiating probate, the Tribal Court shall Issue Letters of Administration conferring the powers and duties of the Personal Representative on the petitioner or another person.

(B) Letters of Administration shall be signed by the Tribal Court under the seal of the court and shall be substantially in the following form:

"Whereas (Decedent) late of (address) on or about the _____ day of _____, died leaving at the time of his death, property in this jurisdiction subject to administration: Now, therefore, know all persons by these presents, that this court hereby appoints _____ Personal Representative of said Estate, and whereas said Personal Representative has duly qualified, the court hereby authorizes him to administer the Estate according to law.

Witness my hand and the seal of said court this _____ day of _____ 20_."

(C) Before Letters of Administration are Issued, the appointed Personal Representative must take and subscribe an oath, before the clerk of the Tribal Court or some other person authorized to administer oaths, that the duties and responsibilities as Personal Representative will be performed according to law. The oath must be filed with the Tribal Court.

§XX.607. Notice of Appointment.

Within twenty days after appointment, the Personal Representative of the Estate of a Decedent shall cause written notice of his appointment and the pendency of said probate proceedings, to be

served personally or by mail to each heir, legatee, and Devisee of the Estate and each beneficiary or transferee of a non-probate asset of the Decedent whose names and addresses are known to him or her, and proof of such mailing or service shall be made by affidavit or declaration under penalty of perjury and filed with the Tribal Court. Such notice shall include a copy of the Tribal Court's order determining whether the Decedent died Testate or Intestate.

§XX.608. Cancellation of Letters of Administration.

The Tribal Court shall have authority for any cause deemed sufficient, to cancel and annul such Letters of Administration and appoint another Personal Representative in the place of the one removed. If after Letters of Administration are granted, a Will of the deceased is found, and probate thereof be granted, the Letters of Administration may be revoked or amended.

§XX.609. Successor Letters of Administration.

If a Personal Representative of an Estate dies or resigns or the letters are revoked before the settlement of the Estate, successor Letters of Administration shall be granted to a person to whom the letters would have been granted if the original letters had not been obtained, and the successor Personal Representative shall perform like duties and incur like liabilities as the preceding Personal Representative, unless the Decedent provided otherwise in a duly probated Will or unless the Tribal Court orders otherwise.

§XX.610. Inventory and Appraisement.

(A) Within three months after appointment, unless the Tribal Court grants more time, the Personal Representative shall make and verify by affidavit a true inventory and appraisement of all of the property of the Estate passing under the Will or by laws of intestacy and which shall have come to the Personal Representative's possession or knowledge, including a statement of all encumbrances, liens, or other secured charges against any item. The Personal Representative shall determine the fair net value, as of the date of the Decedent's death, of each item contained in the inventory after deducting the encumbrances, liens, and other secured charges on the item. Such property shall be classified as follows:

- (1) Real Estate by legal description;
- (2) Stocks and bonds;

- (3) Mortgages, notes, and other written evidences of debt;
 - (4) Bank accounts and money;
 - (5) Furniture and household goods;
 - (6) All other Personal Property accurately identified, including the Decedent's Nonprobate Assets, and proportionate share in any partnership, but no inventory of the partnership property shall be required of the Personal Representative.
- (B) The inventory and appraisal shall be filed with the Tribal Court, and notice of its filing shall be served on any heir, legatee, Devisee, unpaid creditor who has filed a claim, or beneficiary of a nonprobate asset.
- (C) The Personal Representative shall have the duty to amend the inventory and appraisal within thirty days of acquiring knowledge of any additional property of the Estate. Notice of the amendment shall be served as notice of the original inventory was served.

§XX.611. Interim Reports.

- (A) The Personal Representative shall make, verify by his or her oath, and file reports of the affairs of the Estate with the clerk of the Tribal Court at least annually, and more frequently if necessary or required by the Tribal Court. Such report shall contain, at a minimum:
- (1) A statement of the claims filed against the Estate, both allowed and rejected.
 - (2) A statement about whether it is necessary to sell, mortgage, lease, or exchange any property for the purpose of paying debts or settling any obligations against the Estate or expenses of administration of the Estate or expenses pursuant to Section Five of this Title, setting out the facts showing such necessity, if any, and asking for such sale, mortgage, lease, or exchange, if applicable.
 - (3) A statement of the amount of property, real and personal, which has come into the Personal Representative's possession, and a detailed statement of all sums collected and paid out by the Personal Representative.
 - (4) Other information necessary for the Tribal Court regarding any acts or omissions by the Personal Representative.
- (B) The Personal Representative shall provide notice, in person or by mail, return receipt requested, to all heirs at law, legatees, Devisees, and claimants against the Estate of the filing of the report. The Tribal Court shall provide notice to the same group of people of a hearing on the

report, if any.

§XX.612. Final Report and Petition for Distribution.

(A) When the Estate is ready to be closed, the Personal Representative shall file with the Tribal Court a final report and a petition for distribution. Such final report and petition shall, among other things, show that the Estate is ready to be settled and shall show any money collected since the previous report, and any property that may have come into the hands of the Personal Representative since his previous report, and debts paid, and generally the condition of the Estate.

(B) The report shall set out the names and addresses of all the legatees and Devisees if there has been a Will, the names, and addresses of all the heirs who may be entitled to share in the Estate, and shall give a particular description of all the property of the Estate remaining undisposed of, and shall set out such other matters as are necessary to inform the Tribal Court of the condition of the Estate.

(C) The petition for distribution shall ask the Tribal Court for a settlement of the Estate, the distribution of the property, and the discharge of the Personal Representative. If the Personal Representative has been discharged without having closed the Estate, obtained an adjudication as to the heirs, or procured a decree of distribution or final settlement, the Tribal Court may, in its discretion and upon petition of any interested person, cause all such steps to be taken in such Estate as were omitted or defective.

§XX.613. Notice of Hearing.

(A) After the final report and the petition for distribution have been filed with the Tribal Court, the court shall set a date for a hearing on the report and petition.

(B) The Personal Representative shall provide all parties involved in the proceeding with at least twenty (20) days advance written notice of the hearing's time, place, and purpose.

(C) Service of the notice of the hearing shall be by personal service or by registered or certified mail, return receipt requested. Proof of such service shall be made by affidavit, which shall be filed with the Tribal Court before the hearing.

§XX.614. Hearing.

Any interested person may file objections to the final report and petition for distribution or appear at the hearing and present objections thereto. The Tribal Court may take such testimony as it deems necessary to determine whether the Estate is ready to be settled and whether the transactions of the Personal Representative should be approved.

§XX.615. Decree of Distribution.

(A) If the Tribal Court approves of the final report and the petition for distribution and if, after the hearing pursuant to §XX.614, the court determines that the Estate is ready to be closed, the court shall find the Estate ready to be closed, enter a decree approving the final report, adjudge the persons entitled to the remainder of the Estate, and that all debts have been paid, and by such decree shall distribute the real and Personal Property to those entitled to it. Upon the production of receipts from the beneficiaries or distributees for their portions of the Estate, the court shall adjudge the Estate closed and discharge the Personal Representative if satisfied with the correctness thereof.

(B) If it shall appear to the Tribal Court at or before the hearing pursuant to §XX.614 that the Estate cannot be fairly divided, then the whole or any part of said Estate may be sold or mortgaged by the Personal Representative and the proceeds thereof distributed to the persons entitled to it as provided in the decree of distribution.

(C) The Tribal Court has the authority to partition, distribute, and settle all Estates in any manner that seems right and proper to the court. No Estate shall be partitioned and sold if partition is impracticable, except upon a hearing before the court. The court shall fix the values of the several pieces or parcels to be partitioned at the time of making such order of partition or sale, and may order the property sold and the proceeds distributed, or may order partition and distribute the several pieces or parcels, subject to such charges or burdens as shall be proper and equitable.

§XX.616. Distribution to Minors.

(A) A decree of distribution ordering the distribution of an Estate or interest therein to a person under the age of eighteen years shall include one of the following requirements:

(1) Any money shall be deposited in a bank or trust company or be invested in an account in an

insured financial institution for the benefit of the minor subject to withdrawal only upon the order of the Tribal Court, or upon said minor attaining the age of eighteen years and furnishing satisfactory proof thereof to the depository.

(2) A guardian shall be appointed, and the money or property shall be paid or delivered to such guardian prior to the discharge of the Personal Representative in the probate proceeding.

§XX.617. Letters of Administration after Decree of Distribution.

A decree of distribution shall not prevent the subsequent issuance of Letters of Administration if additional property of the Decedent should be discovered or if the Tribal Court, in its discretion, deems it necessary that additional Letters of Administration should be Issued.

§XX.618. Reimbursement for Expenses of Personal Representative.

(A) After discharge of the Personal Representative by order of the Tribal Court, the Personal Representative shall be reimbursed for his or her reasonable expenses involving the Estate. As a prerequisite for reimbursement, the Personal Representative, with the exception of paragraph (B) below, shall produce verifiable records and receipts for the expenses, which shall be filed with the Tribal Court.

(B) No verifiable records and receipts for the documentation of expenses shall be necessary if the expenses do not exceed twenty dollars in value and if they are supported by the Personal Representative's oath. The total amount of such expenses shall not exceed the sum of three hundred dollars in any one Estate.

CHAPTER SEVEN

WILL CONTESTS

§XX.701. Contest of Will.

(A) At any time within 90 days after a Will has been admitted to probate, or within such time as the Tribal Court shall establish in the case of an exempt Estate, any person having an interest in the Decedent's Estate may contest the validity of the Will by filing a petition with the Tribal Court. In the event of a Will contest, the Tribal Court shall take no further action with respect to the probate of the Estate, but shall set a day and hour for a hearing on the Will contest.

(B) If no person contests the validity of a Will within the time period prescribed in paragraph (A) above, the approval for probate or rejection of the Will shall be binding and final.

§XX.702. Notice of Contest.

Upon the filing of the petition referred to in subsection §XX.701, a notice shall be Issued by the Tribal Court to the Personal Representative of the Decedent's Estate, and to all heirs at law, legatees named in the Will or to their guardians if any of them are minors, or their Personal Representative s if any of them are dead, requiring them to appear before the court for a hearing, on a day therein specified, to show cause why the petition should not be granted.

§XX.703. Burden of Proof.

The burden of proof for the invalidity of the Will shall rest upon the person contesting the Will. The Tribal Court's previous order(s) shall stand unless the person contesting the Will provides clear and convincing evidence that the Will should be rejected.

§XX.704. Contest Hearing.

Relevant evidence shall be presented at the contest hearing concerning the Decedent's capacity to execute a valid Will and the circumstances surrounding its execution. Every reasonable effort shall be made to procure the testimony of the attesting witnesses to the Will, or if their testimony is not reasonably available, an effort shall be made to identify signatures to the Will through other evidence.

§XX.705. Orders Following Contest Hearing.

Upon considering all relevant evidence concerning the Will, the Tribal Court shall enter an order affirming the admission of the Will to probate or rejecting such Will and ordering that the probate of the Decedent's Estate proceed as if the Decedent had died without executing the Will.

§XX.706. Costs.

In any contested proceeding, the assessment of costs shall be at the discretion of the Tribal Court. If the contestant is not successful, the court may assess the costs against the contestant, including, unless it appears that the contestant acted with probable cause and in good faith, such

reasonable attorney's fees as the court may deem proper.

CHAPTER EIGHT

CLAIMS AGAINST ESTATE

§XX.801. Notice to Creditors.

(A) The Personal Representative shall cause notice to all known creditors to be posted in at least three conspicuous places on the Reservation and published for three consecutive Issues in a publication of general distribution on the Reservation. Said notice shall state that creditors have 90 days from the date of the first publication of the notice to present their claims to the personal administrator or be forever barred as to claims against the Decedent's probate and Nonprobate Assets.

(B) The Personal Representative shall file an affidavit with the Tribal Court as proof of publication of the notice.

§XX.802. Presentation of Claims.

(A) A claimant pursuant to this section must present a claim against a Decedent's Estate by delivering or mailing a written statement to the Personal Representative, indicating the claim's basis, the claimant's name and address, and the amount claimed. Any documents evidencing the claim shall be attached to the above statement. The claim shall be considered presented on receipt of the claim statement by the Personal Representative. If a claim is not yet due, the statement shall state the date when it will become due. If the claim is contingent or unliquidated, the statement shall state the nature of the uncertainty. If the claim is secured, the statement shall describe the security.

(B) A claim must be supported by affidavit.

(C) A claim must be signed and presented to the personal administrator within the time limit for presenting the claim pursuant to subsection §XX.801(A) above. A copy of the signed claim must be filed with the Tribal Court.

(D) In the event of a claim by the Personal Representative against the Estate, he or she must give a copy of the claim to all interested persons not later than seven days after the time for the claim's original presentation expires. The claim must contain a warning that the Personal

Representative's claim will be allowed unless a notice of objection is delivered or mailed to the Personal Representative within thirty days after the time for the claim's original presentation expires. This paragraph (D) does not apply to a claim for reimbursement of expenses advanced by the Personal Representative.

§XX.803. Allowance or Disallowance of Claims.

(A) The Personal Representative shall allow or disallow all claims presented in the manner described in subsection §XX.802 and within the time limit described in subsection §XX.801(A) in whole or in part.

(B) If the Personal Representative fails to notify the claimant of the allowance or disallowance of the claim within thirty days after receipt of the claim statement described in §XX.802(A), the claimant may petition the Tribal Court for a hearing to determine whether the claim should be wholly or partially allowed or disallowed.

(C) If the Personal Representative allows or disallows a claim, in whole or in part, the Personal Representative shall notify the claimant of the allowance or disallowance by personal service or regular first-class mail to the address stated on the claim statement. The notice shall advise the claimant that the claimant must bring a petition for allowance of the claim in Tribal Court within thirty days after receipt of the notice of disallowance or partial allowance of the claim, or the claim or part of the claim will be forever barred.

(D) The Personal Representative shall file an affidavit with the Tribal Court showing the notification and the date of the notification.

(E) The Personal Representative may, before or after disallowance of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated or unliquidated, if it appears to the satisfaction of the Personal Representative that the compromise is in the best interests of the Estate.

§XX.804. Petition for Allowance of Claim.

If the Personal Representative disallows a claim, in whole or in part, the claimant must bring a petition for allowance of the claim in Tribal Court pursuant to §XX.803(C).

§XX.805. Allowance of Claim by Tribal Court.

The Tribal Court may allow a claim to be properly presented in whole or in part in due time. Upon an interested person's petition concerning a Personal Representative's claim pursuant to §XX.802(D), the Tribal Court may allow the Personal Representative's claim in whole or in part to be properly presented in due time.

§XX.806. Payment of Claim.

(A) All just claims against the Estate shall be paid before distribution of the Estate but shall be paid only after providing for expenses incurred for administration of the Estate, family support pursuant to Section Five of this Title, for claims already presented that have not yet been allowed or whose allowance has been appealed, and for unbarred claims that may yet be presented, including expenses of administration. The payments shall be made in the following order:

- (1) Expenses incurred for administration of the Estate.
- (2) Funeral and burial expenses in such an amount as the Tribal Court shall order.
- (3) Medical expenses incurred during the Decedent's last sickness in such amount as the Tribal Court shall order.
- (4) Wages due for labor performed for the Decedent within sixty days immediately preceding the death of the Decedent.
- (5) Taxes or any debts or fees owing to the Community.
- (6) Debts of the Decedent having preference under the laws of the United States.
- (7) Judgments rendered against the Decedent or his or her Estate, which are liens upon Real Estate owned by the Decedent in fee simple at the time of his or her death, and debts against the Decedent which are secured by mortgages upon Real Estate owned by the Decedent in fee simple at the time of his or her death, in the order of their priority.
- (8) All other claims against the Estate.

§XX.807. Insufficiency of Estate Property.

If the applicable Estate property is insufficient to pay all claims and allowance in full, the Personal Representative shall make payment in the order of priority described in subsection §XX.806(A). A claim whose allowance has been appealed or unbarred claims that may yet be presented, with the exception of expenses of administration, are not entitled to a preference over

claims listed in §XX.806(A)(1) through (8) if the Estate property is insufficient to pay all claims and allowances in full.

§XX.808. Secured Claim.

If a claim is secured by any property of the Decedent, this section does not affect the right of the claimant to realize his or her security, whether or not the claimant presented the claim in the manner provided in subsection §XX.802.

§XX.809. Execution or Levy against Estate Property Not Allowed.

An execution shall not Issue upon nor shall a levy be made against Estate property under a judgment against a Decedent or Personal Representative. This subsection §XX.809 shall not be construed to prevent the enforcement of a mortgage, pledge, or lien upon property in an appropriate proceeding.

§XX.810. Claims Due at Future Time, Contingent and Unliquidated Claims.

(A) This subsection applies to a claim that will become due at a future time, a contingent claim, and an unliquidated claim.

(B) If a claim becomes due or certain before distribution of the Estate and if the claim has been allowed or established by a proceeding, the claim shall be paid in the same manner as a presently due and absolute claim.

(C) For a claim not covered by paragraph (B), the Personal Representative or, on the Personal Representative's or claimant's petition in a proceeding for the purpose, the Tribal Court may provide for payment in one of the following manners:

(1) If the claimant consents, the claimant may be paid the claim's present or agreed value, taking any uncertainty into account.

(2) Arrangement for future payment, or possible payment, on the happening of a contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

§XX.811. Counterclaim.

In allowing a claim, the Personal Representative may deduct a counterclaim that the Estate has

against the claimant. In determining a claim against an Estate, the Tribal Court shall reduce the amount allowed by the amount of a counterclaim and, if counterclaims exceed the claim, render a judgment against the claimant in the excess amount. A liquidated or unliquidated counterclaim may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

§XX.812. Settlement of Claim.

If a claim against the Estate is presented in the manner provided in subsection §XX.802 and it appears to be in the Estate's best interest, the Personal Representative may settle the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

§XX.813. Encumbrances.

If property of the Estate is encumbered by mortgage, pledge, lien, or other security interest and it appears to be in the Estate's best interest, the Personal Representative may pay the encumbrance or a part of the encumbrance, renew or extend an obligation secured by the encumbrance, or convey or transfer the property to the creditor in satisfaction of the lien, in whole or in part, whether or not the encumbrance holder has presented a claim. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered property unless the distributee is entitled to exoneration.

§XX.814. Individual Liability of Personal Representative.

(A) Unless otherwise provided in the contract, a Personal Representative is not individually liable on a contract properly entered into in the Personal Representative's fiduciary capacity in the course of administration of the Estate unless the Personal Representative fails to reveal his or her representative capacity and to identify the Estate in the contract.

(B) A Personal Representative is individually liable for an obligation arising from ownership or control of the Estate or for a tort committed in the course of Estate administration only if the Personal Representative is personally at fault.

(C) A claim based on a contract entered into by a Personal Representative in the Personal Representative's fiduciary capacity, on an obligation arising from ownership or control of the Estate, or on a tort committed in the course of Estate administration may be asserted against the

Estate by proceeding against the Personal Representative in the Personal Representative's fiduciary capacity, whether or not the Personal Representative is individually liable.

(D) An Issue of liability between the Estate and the Personal Representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or in another appropriate proceeding.

(E) The Tribal Court shall have jurisdiction for all claims and proceedings arising out of or relating in any way to the individual liability of the Personal Representative.

CHAPTER NINE INHERITANCE RIGHTS OF SLAYER

§XX.901. Construction of Section.

This section shall be construed broadly to effectuate the policy of the Community that no person shall be allowed to profit by his or her own wrong.

§XX.902. Slayer Not to Benefit from Death of Decedent.

No Slayer shall in any way acquire any property or receive any benefit as the result of the death of the Decedent. The Slayer shall be deemed to have predeceased the Decedent as to property which would have passed from the Decedent or his Estate to the Slayer under this Title or under any agreement entered into between the Slayer and the Decedent.

§XX.903. Insurance Proceeds.

Insurance proceeds payable to the Slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the Decedent, or as the survivor of a joint life policy, shall be paid instead to the Estate of the Decedent, unless the policy or certificate designate a person other than the Slayer or his Estate as secondary beneficiary, in which case such proceeds shall be paid to such secondary beneficiary in accordance with the applicable terms of the policy or certificate.

§XX.904. Rights of Persons Dealing with Slayer.

The provisions of this section shall not affect the rights of any person that, before the interests of

the Slayer in the Estate of the Decedent, have been adjudicated by the Tribal Court and shall not affect purchases from, or has agreed to a purchase with, the Slayer for value and without notice of the killing of the Decedent by the Slayer. Still, the Slayer shall hold all proceeds from such sale in trust for the persons entitled to the property under the provisions of this Title. The Slayer shall also be liable both for any portion of such proceeds which he may have dissipated and for any difference between the actual value of the property and the amount of such proceeds.

§XX.905. Record of Conviction Admissible in Evidence.

The record of the Slayer's conviction of having participated in the willful and unlawful killing of the Decedent shall be admissible in evidence against a claimant of property in any civil action arising under this Title.

CHAPTER TEN SIMULTANEOUS DEATH PROVISIONS

§XX.1001. Scope of Section Limited.

This section shall not apply in cases where the Decedent has made provision for a different distribution in a Will, trust, deed, or contract of insurance.

§XX.1002. Devolution of Property in Case of Simultaneous Death.

Where the title to property covered under this Title or the devolution thereof depends upon the priority of death between the Decedent and one of the Decedent's heirs or Devisees, and there is no sufficient evidence that these persons have died otherwise than simultaneously, the property of each person shall be disposed of as if they had survived each other except where provided otherwise in this Title.

§XX.1003. Procedure when Beneficiaries Die Simultaneously.

Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property, and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and the portion

allocated to each beneficiary shall be distributed as if he or she had survived all the other beneficiaries.

§XX.1004. Simultaneously Death of Joint Tenants.

Where there is not sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived the other and one-half as if the other had survived. If there are more than two joint tenants or tenants by the entirety and all of them have so died, the property shall be distributed in the proportion that one bears to the whole number of joint tenants or tenants by the entirety.

§XX.1005. Insurance Policy.

Where the insured and the beneficiary in a life or accident insurance policy have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

CHAPTER ELEVEN

ACCOUNTING, DISTRIBUTION AND CLOSING OF ESTATE

§XX.1101. Accounting.

Prior to the distribution of the Estate remaining after payment of all just claims and priority payments, the personal administrator shall submit to the Tribal Court for approval an accounting of all receipts and disbursements from the Estate, showing the present status of the Estate and readiness for distribution of the Estate, and also showing a list of the Personal Representative's outstanding expenses incurred in the administration of the Estate and for which approval for payment by the Tribal Court is sought.

§XX.1102. Distribution.

After the Personal Representative has shown to the Tribal Court's satisfaction that an Estate is ready to be distributed, the Tribal Court shall order such distribution according to the provisions of the Decedent's Will or the rules of Intestate succession and according to the rules set forth in this Title.

§XX.1103. Closing of Estate.

Upon filing by the Personal Representative with the Tribal Court of receipts showing that the Estate is fully distributed and of an affidavit by the Personal Representative confirming that the Estate is fully administered and ready to be closed, the Tribal Court shall close the Estate, release the bond of the Personal Representative, if any, and dismiss the Personal Representative.

CHAPTER TWELVE
ABATEMENT AND PROPERTY DISCOVERED
AFTER ESTATE CLOSED

§XX.1201. Abatement.

(A) Except as provided in paragraph (B) of this subsection, 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 as between real and personal property, in the following order:

- (1) Property not disposed of by Will;
- (2) Residuary bequests or devises;
- (3) General bequests or devises;
- (4) Specific bequests or devises.

(B) If the Will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the bequest or devise would be defeated by the order of abatement stated in paragraph (A) of this subsection, a bequest or devise abates as may be found necessary to give effect to the intention of the Testator. The Personal Representative may petition the Tribal Court for an order requiring adjustments in, or contributions from, interests in the Estate assets as necessary to give effect to the intent of the Testator.

§XX.1202. Property Discovered After Estate Closed.

An Estate may be reopened whenever necessary to dispose of a Decedent's property discovered after the Decedent's Estate has been closed. The Tribal Court shall order the 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 and abatement of

the Estate.