

TITLE 2

PROBATE

PREAMBLE

Pursuant to the authority granted the Crow Indian Tribe under the Constitution and By-laws of the Crow Tribe to promote the general welfare of Crow Tribal members, the Crow Tribal Council passed and promulgated Resolution No. 91-21. Resolution No. 91-21 authorized the drafting of a Crow Tribal Probate Code, which now shall be incorporated into the Crow Tribal Law and Order Code and shall be known as Title 2 of said Code.

The enactment of the Crow Tribal Probate Code preempts the present usage of the State of Montana's Probate Code regulations and allows for the following attached cc de to regulate any and all probate matters concerning enrolled members of the Crow Tribe.

The Crow Tribal Probate Code's enactment furnishes the Crow Tribe and its members with guidelines associated with probate matters and a basis that will strengthen and promote the sovereign regulatory authority of the Crow Tribe.

Encoded by Ret No. 91-21 Jan. 12, 1991.

CHAPTER I. ESTABLISHMENT OF CROW TRIBAL PROBATE CODE. Pursuant to the authority of the Crow Tribe Resolution No. 91-21 a tribal probate code is hereby promulgated. The following shall be known as the Crow Tribal Probate Code and preempts any present or future use of the State of Montana's Probate Regulations.

Encoded by Ret No. 91-21 Jan. 12, 1991.

SECTION 1-1. JURISDICTION.

The Crow Indian Tribal Court shall have jurisdiction to appoint administrators, determine heirs, appoint executors, determine the validity of wills, and to probate and distribute the estates and wills of any member of the Crow Tribe with respect to non-trust personal property and non-restricted or non-trust property located within the exterior boundaries of the Crow Reservation. The Tribal Court shall have exclusive and original jurisdiction and exercise functions over restricted or trust property to the greatest extent allowed by law.

Encoded by Ret No. 91-21 Jan. 12, 1991.

SECTION 1-2. APPLICABLE LAW.

The law of the Crow Tribal Probate Code and other provisions of the Crow Tribal Law and Order Code shall have full force and effect over any and all probate matters relating to enrolled members of the Crow Tribe. The law of the State of Montana relative to any decedent's estate which is a member of the Crow Tribe shall not apply, unless allowed by federal regulations and law.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 1-3. CONSTRUCTION.

These provisions relating to decedent's estates shall be liberally construed and applied to give effect to the underlying policy of distributing a decedent's estate according to the decedent's intent where there is a valid will manifesting such intent, or according to the provisions of this Probate Code where there is not a valid will.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 1-4. EFFECT OF FRAUD AND EVASION.

Whenever fraud has been perpetrated in connecting with any proceeding or in any statement filed under this Probate Code or if fraud is used to avoid or circumvent the provisions or purposes of this Probate Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud including restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not. Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 5 years after the time of the commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affect the succession of his estate.

Encoded by Ret No. 91-21 Jan. 12, 1991.

SECTION 1-5. EVIDENCE AS TO DEATH AND STATUS.

In proceedings under this Code the rules of evidence in the trial court are applicable unless specifically displaced by the Probate Code. In addition, the following rules relating to determination of death and status are applicable:

- (1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;
- (2) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive, is prima facie evidence of the status and of the dates, circumstances and places if disclosed by the record or report;
- (3) A person who is absent for a continuous period of 5 years, during which he/she has not been heard from, and whose absence is not satisfactorily explained after diligent search and inquiry is presumed to be dead. His/her death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

Encoded by Ret No. 91-21 Jan. 12, 1991.

SECTION 1-6. PRACTICE OF COURT.

Unless specifically provided to the contrary in this Probate Code or unless inconsistent with its provisions, the Crow Indian Rules of Civil Procedure including the Rules Evidence and appellate review govern formal proceedings under this Probate Code.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 1-7. RECORDS AND CERTIFIED COPIES.

The Clerk shall keep a file for each decedent of all documents filed with the Court under this Probate Code-and shall keep a numerical index, of all such estates to facilitate access to such records. Upon payment of the fee (not to exceed fifty cents per copy page), the Clerk shall issue certified copies of any document or papers so filed. Except as specifically provided in this Probate Code, every document filed with the Court under this Probate Code shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and the penalties for perjury shall follow deliberate falsification therein.

Encoded by Ret No. 91-21 Jan. 12, 1991.

SECTION 1-8. JURY TRIAL

If properly determined, a party is entitled to a trial by Jury in any proceeding in which any genuine controverted question of fact arises, or the trial judge may order a jury trial on any such issue on his/her own motion. Otherwise all proceedings under this Probate Code shall be handled by a trial judge or as is appropriate.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 1-9. SERVICE OF PUBLIC NOTICE OF HEARING.

- (1) If notice of a hearing on any petition or other matter is required, and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his/her attorney if he/she has appeared by attorney or requested that notice be sent to his/her attorney. Notice shall be given:

a. by mailing a copy thereof at least 14 days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his/her demand for notice, if any, or at his/her office or Place of residence, if known; or

b. by delivering a copy thereof to the person being notified personally, at least 14 days before the time set for the hearing; or

c. if the address, or identity of any person is not known and cannot be ascertained by reasonable diligence, by posting a copy of the notice in at least three (3) conspicuous public places on the Reservation at least 14 days before the time set for the hearing.

(2) The Court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made at or before the hearing and filed in the proceeding.

(4) A person, including a guardian ad litem or the fiduciary, may waive notice by a writing signed by him/her or his/her attorney and filed in the proceeding.

Encoded by Ret No. 91-21 Jan. 12, 1991.

SECTION 1-10. RENUNCIATION OF SUCCESSION.

A person (or his/her representative) who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument may renounce in whole or in part the succession to any property or interest therein by filing a written instrument with the Court not later than 6 months after the decedent's death or the time at which it is determined that the person is entitled to take property if such is not known at the time of death the instrument shall (i) describe the property or part thereof or interest therein renounced, (ii) be signed by the person renouncing and (iii) declare the renunciation and the extent thereof. Upon proper renouncement, the interest renounced passes as if the renouncing person had predeceased the decedent or donee.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 1-11. EFFECT OF DIVORCE, ANNULMENT, AND DECREE OF SEPARATION.

A person who is divorced from a decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he/she is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this Probate Code.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 1-12. EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY DESIGNATIONS.

(1) A surviving spouse, heir or devisee who criminally and intentionally kills the decedent is not entitled to any benefits under the will or under this Probate Code, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who criminally and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent, so that the share of the decedent passes as his/her property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who criminally and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, life insurance policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of an offense containing the elements of criminal and intentional killing is conclusive for purposes of this section. In the absence of a conviction of criminal and intentional killing, the Court may determine by a preponderance of evidence whether the killing was criminal and intentional for purposes of this section.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 1-13. DETERMINATION OF HEIRS.

When a member of the Crow Tribe of Indians dies leaving any property subject to the jurisdiction of this Court, any person claiming to be an heir of the decedent, or the Tribe, may file a petition in the Court for a determination of the heirs of the decedent and for the distribution of such property.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 1-14. PROTECTION OF THE ESTATE.

The Court is empowered to appoint a temporary custodian or administrator to supervise and protect the assets of the estate as outlined by this Probate Code.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 1-15. CLAIMS.

No claim shall be allowed against the estate of the decedent, except claims of the Tribe, including claims for expenses of last sickness and funeral expenses. All adjudicated and/or unadjudicated debts of the decedent at the time of his/her death must be filed prior to the hearing of probate and all just claims of creditors allowed by the Court shall be paid before distribution of the estate, but shall be paid only after payment of the family allowance and homestead allowance as provided herein. Any claims filed subsequent to the hearing of probate will be held for naught and extinguished as against the decedent's estate.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 1-16. DISTRIBUTION.

The Court shall distribute all property of the decedent, over which the Court has jurisdiction.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 1-17. FEES.

(1) An administrator or executor may elect to receive a fee of 5% of the value of the gross estate but not less than \$50.00 to be paid from the estate prior to final distribution of the estate.

(2) An attorney who represents the personal representative of an estate for purposes of administering the estate may be paid from the estate a fee of 5% of the gross estate, but not less than \$50.00. A greater amount may be approved upon a showing of extraordinary service to the estate.

Encoded by Res. No. 91-21 Jan. 12, 1991.

CHAPTER II. WILLS. A will is generally defined as an instrument by which a person makes a disposition of property, to take effect after his/her death, and which by its own nature is ambulatory and revocable during his/her lifetime.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 2-1. WHO MAY MAKE A WILL. Any person 18 or more years of age who is of sound mind may make a will.

(A) EXECUTION.- Except as provided for holographic wills, every will shall be in writing signed by the testator or in the testator's name by some other person at his/her direction, and shall be signed by at least two (2) persons each of whom witnessed either the signing or testator's acknowledgment of the signature or of the will.

(B) RULES OF CONSTRUCTION AND INTENTION.- The intention of a testator as expressed in his/her will controls the legal effect of his/her dispositions. The rules of construction expressed in the succeeding sections of this Probate apply unless a contrary intention is indicated by the will.

i. CONSTRUCTION OF GENERIC TERMS TO ACCORD WITH RELATIONSHIPS AS DEFINED FOR INTESTATE SUCCESSION.- Adopted person. and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.

(C) HOLOGRAPHIC WILL.- A will which does not comply with, the next preceding section is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator and fraud and undue influence are not present.

(D) SELF-PROVED WILL- An attested will may, at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a notary public or Trial judge and evidenced by the notary or judge's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF _____

COUNTY OF _____

We, _____

and _____ the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his/her last will and that he/she had signed willingly or directed another to sign for him/her, and that executed it as his/her free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his/her knowledge the testator was at the time 18 or more years of age, of sound mind and under no constraint or undue influence.

Testator

Witness

Witness

SUBSCRIBED, sworn to and, acknowledged before me by _____, the

testator, and subscribed and sworn to before me by _____ and _____
_____witnesses, this _____day of _____, 19____.

(Signed)

(Official capacity of officer)

(E) WHO MAY WITNESS.- (1) Any person generally competent to be a witness may act as a witness to a will.
(2) A will or any provision thereof is not invalid because the will is signed by an interested witness, unless fraud or undue influence are provable.

(F) INCORPORATION BY REFERENCE.- Any 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.

(i) EVENTS OF INDEPENDENT SIGNIFICANCE.- A will may dispose of property by reference to acts and events which have significance apart from their effect upon the disposition 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.

(G) CONSTRUCTION THAT WILL PASSES ALL PROPERTY AFTER-
ACQUIRED PROPERTY.- A will is construed to pass all property which the testator owns at his/her death including property acquired after the execution of the will.

(H) ADEMPION BY SATISFACTION.- Property which a testator gave in his/her lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devisee, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

(I) STATUS OF HEIRS; NO TAKERS.- If a non-member spouse and/or heir of an enrolled member of the Crow Tribe inherits intestate any trust land of the Crow Tribe from the decedent he/she shall only retain a life estate in said lands and thereafter, the Crow Tribe or any member of the tribe thereafter shall have first option to purchase said lands. The purchase price from the non-member shall be 20% of the fair market value thereof. If there exists no taker under the provisions of this section, the estate passes to the Crow Tribe. Moreover, this section shall be interpreted in accordance with "Section 2 of the Crow Act", 41 Stat. 75. (1920).
Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 2-2. REVOCATION OF WILL BY WRITING.

A will or any part thereof is revoked:

- (1) By a subsequent will which revokes the prior will in whole or in part expressly or by inconsistency; or
- (2) By being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his/her presence and by his/her direction.

(A) REVOCATION BY DIVORCE.- If, after executing a will, the testator is divorced or his marriage 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 specific power of appointment on the former spouse and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly

provides otherwise. 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, and other provisions conferring some power or office on the former spouse are interpreted as if the 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 husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described, in this section revokes a will.

(B) REVIVAL OF REVOKED WILL.- (1) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he/she intended the first will to take effect as executed.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 2-3. REQUIREMENT THAT DEVISEE SURVIVE TESTATOR BY 120 HOURS.

A devisee who does not survive the testator by 120 hours is treated as if he/she predeceased the testator, unless the will of the decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

(A) SIMULTANEOUS DEATH- (i) Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise.

(2) 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 these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

(3) Where there is no 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 and one-half as if the other had survived, If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(4) Where the insured and the beneficiary in a policy of life or accident insurance 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.

(5) These provisions on simultaneous death shall not apply in cases where the decedent has made provision for a different distribution in a will, trust, deed or contract of insurance.

(B) ANTI-LAPSE; DECEASED DEVISEE; CLASS GIFTS.- If a devisee who is a grandparent or a lineal descendant of grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

(C) FAILURE OF TESTAMENTARY PROVISION.- (1) Except as provided in the next preceding section if a devise other than a residuary devise fails for any reason it becomes a part of the residue.

(2) Except as provided in the next preceding section if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

Encoded by Ret No. 91-21 Jan. 12, 1991.

SECTION 2-4. PROBATE OF WILLS; PETITION.

A petition for Letters Testamentary may be made by any person having possession of a decedent's will. The petition must be in writing, signed by the petitioner, and shall state the basis for the Court's jurisdiction, the names of the heirs of the decedent, if known, and the name or names of any person specified in the will as executor and the address of such person if known. The original copy of the will shall be submitted to the Court with the petition.

(A) QUALIFICATION OF EXECUTOR.- The court shall appoint an executor to administer estate. The executor shall be a competent adult Tribal member and preference shall be given, if such persons are otherwise qualified, to the person named in the will as such, followed by the surviving spouse child of the decedent with preference given in descending order of age.

(B) APPOINTMENT OF EXECUTOR- (1) Upon receipt of a petition for Letters Testamentary, the clerk shall schedule a hearing at which an executor will be appointed and Letter Testamentary authorized. The hearing shall be scheduled so that adequate notice to interested persons can be made.

(2) Notice of the hearing shall be made by the petitioning party to all persons named as takers under the will, and to all known heirs of the decedent if different from the named takers, including creditors and also posted in a conspicuous place in the Tribal Administration Building.

(3) At the hearing, the Court shall first determine the validity of the decedent's will and then appoint an executor to administer the estate according to the terms of this Probate Code and the decedent's will.

(4) Letters Testamentary shall be granted to the person appointed as executor upon his taking an oath, to be prescribed by the Court, to the effect that he will faithfully and honestly administer the estate.

(i) DUTIES OF EXECUTOR.- The duties of the executor shall be the same as those prescribed in this Probate Code for the administrator of an intestate estate.

(C) ACCOUNTING.- Prior to the distribution of the estate remaining after payment of all just claims and priority payments, the executor shall submit to the Court for approval an accounting of all receipts and disbursements from the estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney's and/or executor's fees involved for which approval for payment is sought.

(D) DISTRIBUTION; CLOSING ESTATE.- (1) When it is made to appear to the Court that an estate is ready to be distributed, the Court shall order such distribution according to the provisions of the decedent's will or the rules of intestate succession whichever is applicable, and according to the rules set forth in this Probate Code.

(2) The estate shall be closed and the personal representative of the estate dismissed upon filing with the Court receipts showing that the estate is fully distributed, and also upon filing the personal representative's affidavit that the estate is fully administered and ready to be closed.

(E) DISTRIBUTION; ORDER IN WHICH ASSETS APPROPRIATED; ABATEMENT.- (1) Except as provided in subsection (2) 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: (a) property not disposed of by the will; (b) residuary devise; (c) general devise; (d) specific devise. 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.

(2) 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 subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator. (2) 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.

(F) **PROPERTY DISCOVERED AFTER ESTATE CLOSED.**- An estate may be reopened whenever necessary to dispose of a decedent's property discovered after his/her estate has been closed. The 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.

(G) **PERSONAL REPRESENTATIVE AND ATTORNEY'S FEES.**- (1) An administrator or executor may elect to receive a fee of 5% of the value of the gross estate but not less than \$50.00 to be paid from the estate prior to final distribution of the estate.

(2) An attorney who represents the personal representative of an estate for purposes of administering the estate may be paid from the estate a fee of 5% of the gross estate, but not less than \$50.00. A greater amount may be approved upon a showing of extraordinary service to the estate.

Encoded by Res. No. 91-21 Jan. 12, 1991.

CHAPTER III. INTERSTATE SUCCESSION; INTESTATE ESTATE

When any member of the Tribe dies without disposing of all or part of his property by a valid will, all such property not so disposed will pass in accordance with this Probate Code and in conjunction with any applicable Federal Regulations.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 3-1. PROBATE OF INTESTATE ESTATE; PETITION.

(1) When any member of the Tribe dies leaving an intestate estate subject to the jurisdiction of the Crow Indian Tribal Court, any person claiming to be an heir of the decedent, or the Tribe, may petition the Court for a determination of the heirs of the decedent and for the distribution of such property. The petition shall contain the names and addresses of all persons known to the petitioner who may be entitled to share in the distribution of the estate.

(2) Whenever there is a valid will probated by the Court which does not dispose of all of the decedent's property, a determination of the heirs entitled to such property and its distribution shall be made by the Court at or before the time the remainder of the estate is distributed without the necessity of a separate petition and proceeding.

(A) ADMINISTRATOR OF INTESTATE ESTATE.-

(1) If an executor is appointed over a decedent's property which is disposed of by a valid will, such person shall likewise assume authority over the decedent's intestate estate and administer it with the rest of the decedent's estate.

(2) Whenever it reasonably appears that such is necessary to the preservation, administration and/or distribution of a decedent's intestate estate, the Court shall appoint an administrator over the estate. It shall not be

necessary to appoint an administrator if the value of the decedent's property appears to be less than \$1,000.00 in value, no problems in administering the estate are foreseen, and no one requests that one be appointed.

(3) The following person, if legally competent, shall be afforded priority in order of their listing for appointment as administrator the surviving spouse, children in descending order of age, other blood relatives in order of their closeness of relationship; any adult tribal member.

(4) The duties of the administrator shall be: (a) to take possession of all property of the decedent subject to this Probate Code; (b) within one month of his appointment make an inventory and appraisal of such property and file it with the Court; (c) determine and file with the Court a list of all known relatives of the decedent, their ages, and their relationship to the decedent; (d) subject to the approval of the Court ascertain and pay all of the debts and legal obligations of the decedent; (e) prosecute and defend actions for or against the estate; (f) distribute the estate in accordance with the order of the Court and file receipts with the Court showing distribution of the estate.

(5) The administrator shall file a bond at the discretion of the Court, in an amount to be set by the Court to insure his/her faithful, honest performance of his duties; as administrator. Unless otherwise made to appear necessary or desirable, no bond shall be required of an administrator who is the spouse or child of a decedent.

(B) APPOINTMENT OF ADMINISTRATOR.-

(1) Upon receipt of a petition to administer an intestate estate, the clerk shall schedule a hearing at which an administrator will be appointed. Said hearing shall be scheduled far enough in advance to allow the required notice to be made.

(2) Notice of the hearing shall be made by the petitioning party or by the Clerk if the Tribe is the petitioning party and shall also be posted in a conspicuous place in the Tribal Administration Building.

(3) The Court shall determine who is the proper person to appoint as Administrator, and if such person manifests his/her willingness to serve, order his/her appointment as administrator.

(C) ACCOUNTING.- Prior to the distribution of every estate for which an administrator has been appointed, such administrator shall render an accounting to the Court, for its approval, of all receipts and disbursements from the estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney's and/or administrator's fees involved for which approval for payment is sought. In estates in which no administrator is appointed, the Clerk shall account to the Clerk for all transactions relating to the estate.

(D) STATUS OF HEIRS; NO TAKER.- If a non-member spouse and/or heir of an enrolled member of the Crow Tribe inherits intestate any trust land of the Crow Tribe from the decedent he/she shall only retain a life estate in said lands and thereafter, the Crow Tribe or any member of the tribe thereafter shall have first option to purchase said lands, The purchase price from the non-member shall be 20% of the fair market value thereof. If there exist no taker under the provisions of this section, the intestate estate passes to the Crow Tribe. Moreover, this section shall be interpreted in accordance with "Section 2 of the Crow Act", 41 Stat. 751 (1920).

(E) NOTICE TO CREDITORS.- The administrator of the estate or the Clerk if no administrator is appointed shall cause notice to creditors to be posted in at least three conspicuous places on the Reservation and published at least twice in a publication of general distribution on the Reservation. Said notice shall state that creditors have 14 days from the date of the last publication of the notice to present their claims to the administrator or Clerk and that only those timely filed claims, as indicated in Section 1-16 shall be paid by the estate.

(F) ADVANCEMENTS.- If a person dies intestate as to all his estate, property which he/she gave in his/her lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the

property is not taken into account in computing the interstate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

i. DEBTS OWED DECEDENT.- A debt owed to the decedent is not charged against the intestate share of any person 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 issue.

Encoded by Res. No. 91-21 Jan. 12, 1991.

Section 3-2. FAMILY RIGHTS; ELECTIVE SHARE. — Statutory provision herein which allows the surviving spouse which is provided for his/her in the decedent's will, dower or taking his/her statutorily prescribed share.

(A) RIGHT TO ELECTIVE SHARE.-If a married Tribal member domiciled on the Reservation dies, the surviving spouse has a right to elect, to take an elective share of one-third of the estate of the decedent, less funeral and administration expenses, family allowance and enforceable claims against the estate, plus the value of all property in excess of \$1,000.00 transferred by the decedent to any person other than the surviving spouse in the three years preceding his/her death to which the surviving spouse has not joined by written consent.

(B) RIGHT OF ELECTION PERSONAL TO SURVIVING SPOUSE. - The right of election of the surviving spouse may be exercised only during his/her lifetime by him/her. In the case of an incompetent or protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending, after finding that exercise is necessary to provide adequate support for the protected person during his/her probable life expectancy.

i. WAIVER OF RIGHT TO ELECT.- The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights - (or equivalent language in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the Property of the other and a renunciation by each of all benefits which would otherwise pass to him/her from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

ii. PROCEEDING FOR ELECTIVE SHARE; TIME LIMITATION.- (!) The surviving spouse may elect to take his/her elective share in the estate by filling in the Court and mailing or delivering to the personal representative a petition for the elective share within the period for the granting of notice to creditors for filing Claims which arose before the death of the decedent. The Court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired. (2) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the estate whose interests will be adversely affected by the taking of the elective shares. (3) The surviving spouse may withdraw his/her demand for an elective share at any time before entry of a final determination by the Court. (4) After notice and hearing, the Court shall determine the amount of the elective share and shall order its payment from the assets of the estate or by contribution as appears appropriate under the following section. [If it appears that a fund or property included in the estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the Court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contributor. (5) The order or judgment of the Court may be enforced as necessary in a suit for contribution or payment.

iii. EFFECT OF ELECTION ON BENEFITS BY WILL.- (1) An election by a surviving spouse does not affect the right of such spouse to participate in a family allowance but the value of any part of the estate passing to the surviving spouse by estate or intestate succession shall, unless renounced by the spouse in his/her petition, be counted against his/her elective share. (2) When an election to take an elective share has been made and there is insufficient property in the estate which is not specifically disposed of to pay the elective share, liability for payment of the elective share shall be equitably apportioned among the other recipients of the estate in proportion to the value of their interests therein. (3) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time transferred

(C) OMITTED SPOUSE.- Notwithstanding the provisions of this Code, if a testator fails to provide by will for his/her surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he/she would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transferee in lieu of a testamentary provision is shown by the statement of the testator or from the amount of the transfer or other evidence.

(D) PRETERMITTED CHILDREN.-

(1) If a testator fails to provide in his/her will for any of his/her children living or born or adopted after the execution of his/her will, the omitted child receives a share in the estate equal in value to that which he/she would have received if the testator had died intestate unless: (a) it appears from the will that the omission was intentional; or (b) when the will was executed the testator had one or more children and devised substantially all his/her estate to the other parent of the omitted child; or (c) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) If at the execution of the will, the testator fails to provide in his/her will for a living child solely because he/she believes the child to be dead, the child receives a share in the estate equal in value to that which he/she would have received if the testator had died intestate.

(3) In satisfying a share provided by this section, the devises made by the will abate as provided in the section of the Probate Code which concerns "abatement."

(E) FAMILY ALLOWANCE AND HOMESTEAD ALLOWANCE.- In addition to the right to homestead allowance and exempt property, 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 him/her 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. It 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 any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his/her guardian or other person having his/her 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 allowance. 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 his/her right to allowances not yet paid.

A surviving spouse of a decedent who was domiciled on the Reservation is entitled to a homestead allowance of \$2,500.00. If there is no surviving spouse, each minor child and each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$2,500.00 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims

against the estate. Homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share.

(F) NON-MEMBER SPOUSE; LIFE ESTATE.- Any non-member spouse who takes under this Code inherits only as permitted under Chapters II, (I) & III, (D).

Encoded by Res. No. 91-21 Jan. 12, 1991.

CHAPTER IV. DEFINITION OF GUARDIANS.

A guardian is an adult Indian appointed to take care of the person or property of another. The guardian must exercise the highest standard of care for the ward, and is subject to regulation by the Tribal Court.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 4-1. PERSONS TO WHOM GUARDIANS MAY BE APPOINTED.

(A) MINORS.- A guardian may be appointed for any adult Indian subject to the jurisdiction of the Court who is under 18 years of age who has no living parent.

(B) MENTAL INCOMPETENTS.- A guardian may be appointed for any Indian subject to the jurisdiction of the Court who by reason of mental illness lacks capacity to manage his or her person or property, and who has no parent, or spouse.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 4-2. HOW GUARDIANS ARE APPOINTED.

(A) BY WILL.- The last surviving parent or spouse of a minor or mental incompetent may designate in a will the guardian for the minor or mental incompetent. Upon determination by the Court that the will is valid, and that the person designated is willing to accept the responsibilities of guardianship, the Court shall appoint the person designated; provided that for good cause shown, the Court may decline to appoint the person designated

(B) BY COURT APPOINTMENT.- Where a minor or mental incompetent is in need of a guardian, and no guardian is appointed pursuant to a valid will, the Court may appoint a guardian, to promote the best interests of the minor or mental incompetent.

(C) HEARING.- In each case where a guardian is to be appointed, ether by will, or by Court appointment, a hearing shall be held following notice to all interested parties as provided in Section 1-9. of this Title.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 4-3. DUTIES OF A GUARDIAN.

A guardian of the person shall be responsible for the care and custody of the minor or mental incompetent. A guardian of the property shall, subject to conditions imposed by the Court, administer the assets of the minor or mental incompetent for their best interests and shall use such assets, and any proceeds from those assets, only for the needs of the minor or mental incompetent. Any other use of the assets of the minor or mental incompetent shall be grounds for immediate termination of the guardianship. The Court, in appointing a guardian shall specify if the guardian is to serve as guardian of the person, guardian of the property, or both.

Encoded by Res. No. 91-21 Jan. 12, 1991.

SECTION 4-4. TERMINATION OF GUARDIANSHIP.

(A) Upon motion of any person, or the Tribe, the Court may provide notice under Section 1-9 of this Title and a hearing on whether to terminate a guardianship. Grounds for termination shall include, but not be limited to, personal use by the guardian of the assets of the ward, failure to provide a reasonable level of care for the ward, and the marriage of a minor ward.

(B) Guardianship, including for guardians of the property the control over the ward's assets, shall terminate automatically upon a minor reaching age 18, or upon a mental incompetent being adjudged by the Court to have regained legal capacity.

Encoded by Res. No. 91-21 Jan. 12, 1991.