

Title XII - Probate and Guardianship

Chapter 1. Probate

- Sec. 101. Jurisdiction
- Sec. 102. Determination of heirs
- Sec. 103. Public notice of hearing
- Sec. 104. Service of notice on interested parties
- Sec. 105. Proof of service of notice of hearing
- Sec. 106. Descent of property where there is no valid will
- Sec. 107. Definition of surviving spouse
- Sec. 108. Afterborn heirs
- Sec. 109. Relatives of half blood
- Sec. 110. Protection of the estate
- Sec. 111. Claims
- Sec. 112. Distribution
- Sec. 113. Wills
- Sec. 114. Surviving spouse's elective share
- Sec. 115. Revocation of the will by writing or act
- Sec. 116. Revocation by divorce or annulment
- Sec. 117. Where a beneficiary of a will fails to survive the decedent
- Sec. 118. Fees

Chapter 1. Probate

Sec. 101. Jurisdiction.

Except as to trust or restricted land subject to the jurisdiction of the United States, the Tribal Court shall have jurisdiction to determine heirs, to determine the validity of wills and to probate the estates and wills of any Indian with respect to property located on the Reservation.

Sec. 102. Determination of heirs.

When any Indian dies leaving property subject to the jurisdiction of the 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.

Sec. 103. Public notice of hearing.

Promptly after the petition is filed, the clerk of Court shall give notice of the time and place of hearing to determine the heirs of the deceased Indian, and call on all persons interested to attend the hearing, by posting a copy of the notice for at least twenty (20) days prior to the date of hearing in three (3) or more conspicuous places in the vicinity of the place of hearing. Notice shall also be published in a newspaper of general circulation on the Reservation at least once per week for three (3) successive weeks prior to the hearing.

Sec. 104. Service of notice on interested parties.

A copy of the notice of hearing shall be served at least ten (10) days before the date of hearing, either personally, by first class mail, by certified mail, or by registered mail, on each

claimant, each possible heir who is known to the Court, the Superintendent, and the Tribes. Service on the Tribes shall be made by delivering a copy of the notice to the Chairman and a copy to the Secretary of the Tribal Executive Board.

Sec. 105. Proof of service of notice of hearing.

Proof of service of the notice of hearing required in Section 104 shall be filed in each case. Proof of service shall consist of one of the following: (a) acknowledgment of receipt of service by the endorsement of the person served on a copy of the notice of hearing; (b) a certificate that service was made in person or by first class mail, signed by an adult person making service; or (c) the return receipt where service was made by certified mail or registered mail.

Sec. 106. Descent of property where there is no valid will.

(a) When an Indian dies without a valid will, the Indian's property which is subject to the Court's jurisdiction shall descend to the following persons:

(1) One-half ($\frac{1}{2}$) of the interest shall descend to the surviving spouse and the other one-half ($\frac{1}{2}$) shall descend in equal shares to the children of the decedent and to the issue (children, grandchildren and so on) of any deceased child of the decedent by right of representation;

(2) If there is no surviving spouse, the interest shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation;

(3) If there are no surviving children or issue of any child, the interest shall descend to the surviving spouse;

(4) If there is no surviving spouse and no surviving children or issue of any child, the interest shall descend to the surviving parents or parent of the decedent;

(5) If there is no surviving spouse, and no surviving children or issue of any child, and no surviving parent, the interest shall descend equally to the brothers and sisters of the decedent;

(6) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent and no surviving brothers and sisters, the interest shall descend equally to surviving grandparents;

(7) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters and no surviving grandparents, the interest shall descend equally to surviving aunts and uncles;

(8) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers or sisters, no surviving grandparents, no surviving aunts and uncles, the interest shall descend equally to surviving nieces and nephews;

(9) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers or sisters, no surviving grandparents, no surviving aunts and uncles, and no surviving nieces and nephews, the interest shall descend equally to surviving cousins of the first degree;

(10) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters, no surviving grandparents, no surviving aunts and uncles, no surviving nieces and nephews, and no surviving cousins of the first degree, the interest shall descend equally to surviving cousins of the second degree;

(11) If there is no surviving spouse, no surviving children or issue of any child, no

surviving parent, no surviving brothers or sisters, no surviving grandparents, no surviving aunts and uncles, no surviving nieces and nephews, no surviving cousins of the first degree, and no surviving cousins of the second degree, the interest shall descend equally to surviving cousins of the third degree;

(12) If there is no surviving heir as described in this section, the property shall escheat to the Tribes.

(b) As used in this section, the words "children" and "issue" include adopted children and children of unwed parents where the Secretary of the Interior or the Tribal Court determines that paternity has been acknowledged or established, except that

(1) a child may not inherit by intestate succession from or through a parent whose parental rights with respect to said child have been terminated pursuant to lawful authority and

(2) a parent may not inherit by intestate succession from or through a child with respect to which such parent's parental rights have been so terminated.

Sec. 107. Definition of surviving spouse.

For purposes of this chapter, a surviving spouse is the person who, at the time of decedent's death, was legally married to the decedent as provided in Title X, Chapter 2 of this Code. A person who is divorced from the 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 Section.

Sec. 108. Afterborn heirs.

Relatives of the decedent conceived before his/her death and born thereafter but before the estate is distributed inherit as if they had been born during the lifetime of the decedent.

Sec. 109. Relatives of half blood.

Relative of the half ($\frac{1}{2}$) blood (for example, a half ($\frac{1}{2}$) sister) inherit the same share they would inherit as if they were of the whole blood.

Sec. 110. Protection of the estate.

The Court is empowered (a) to appoint a temporary custodian or administrator to supervise and protect the assets of the estate; (b) to take all action, including the sale of the property at appraised value, necessary and appropriate to protect or conserve the property or to satisfy claims, before distribution to the heirs; and (c) to require bond from the custodian or administrator for the fulfillment of his/her duties.

Sec. 111. Claims.

The Court shall have jurisdiction to adjudicate claims against the estate of the decedent, including claims by the Tribes. Those having claims against the decedent's estate shall present a brief written statement of their claims to the Court within a reasonable time after the notice pursuant to Section 103 of this Title. Valid claims against the estate shall be satisfied before the estate is distributed to the heirs. However, the same property that is exempt from the satisfaction of money judgments under Title VIII, Section 310 of this Code shall be exempt from satisfaction of claims against the estate.

Sec. 112. Distribution.

The Court shall distribute all property of the decedent, over which the Court has jurisdiction. Before distributing the property the Court shall give notice as provided in Section 103.

Sec. 113. Wills.

When any Indian dies, leaving a will disposing of property subject to the jurisdiction of the Court, the Court, at the request of any person named in the will or any other interested party, shall determine the validity of the will after giving notice as provided by Section 104 hereof. A will shall be deemed valid if it was made in writing and signed by the decedent in the presence of two (2) witnesses who then and there signed the will as witnesses, and if, at the time the decedent made the will, the decedent was of sound and sane mind, understood what he/she was doing and was not subject to undue influence or duress of any kind from another person. If the will is determined to be invalid, the Court shall determine the heirs as if the decedent had died without a will, and shall distribute the property accordingly; provided that the determination that a will is invalid shall be a final order which may immediately be appealed as provided in Title II, Chapter 2, Section 205 of this Code.

Sec. 114. Surviving spouse's elective share.

When a married Indian dies and leaves a valid will in which the spouse is to receive less than one-third (1/3) of the net estate, the surviving spouse has a right to take an elective share of one-third (1/3) of the net estate. The net estate is the estate less valid claims under Section 111, with the same exemptions as provided in that Section. If, after the elective share is distributed to the surviving spouse, the remaining estate is insufficient to satisfy the bequests in the will, each bequest shall be proportionally reduced.

Sec. 115. Revocation of the will by writing or act.

A will or any part thereof is revoked:

(1) by a subsequent will which expressly revokes the prior will or part of the will;

or

(2) by being burned, torn, obliterated or destroyed with the intent and purpose of revoking the will.

Sec. 116. Revocation by divorce or annulment.

(1) If after executing a will the testator is divorced or his/her marriage annulled, the divorce or annulment revokes any bequest of property made by the will to the former spouse and any designation of the former spouse as executor or guardian, unless the will expressly provides that a bequest shall survive divorce or annulment.

(2) Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent.

(3) Provisions of a will that are revoked solely by this section are revived by the testator's remarriage to the former spouse.

Sec. 117. Where a beneficiary of a will fails to survive the decedent.

If a beneficiary under a will who is a grandparent, parent or lineal descendant of the decedent fails to survive the decedent, the issue of the deceased beneficiary inherit his/her share by right of representation, and otherwise the bequest shall lapse.

Sec. 118. Fees.

(a) The Court shall fix probate fees in a sum not less than ten dollars (\$10.00) and not more than one thousand dollars (\$1,000.00) or a sum equal to five percent (5%) of the appraised value of the estate, whichever is less.

(b) Within the limits of subsection (a), the Court shall fix the probate fees at a level which will pay for the expenses of probating the estate including fees and expenses of any custodian or administrator appointed under Section 110, and the cost of any appraisals or sales of assets of the estate.

(c) The probate fee shall be paid from the assets of the estate prior to distribution of those assets to the heirs.

(d) In the event the entire probate fee collected is not used for expenses of probating the estate the excess shall be deposited to the general fund of the Tribes, to be expended as the Executive Board sees fit.

Chapter 2. Guardianship and Powers of Attorney

Sec. 201. Definition of guardian.

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.

Sec. 202. Persons to whom guardians may be appointed.

(a) Minors. A guardian may be appointed for any Indian subject to the jurisdiction of the Court who is under eighteen (18) years of age pursuant to Title 9, Chapter 9.

(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.

Sec. 203. 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, that the individual for whom a guardian has been designated is in fact a minor or mental incompetent, 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. The Court may appoint a guardian on its own motion or at the petition of an interested party. In appointing guardians the Court shall give preference to relatives of the individual for whom a guardian is to be appointed, except that the Court shall not be bound by such preference if it finds that such relatives would not act in the best interests of the ward.

(c) Hearing. In each case where a guardian is to be appointed, either by will, or by Court appointment, a hearing shall be held following notice to all interested parties as provided in Section 104 of this Title. A copy of the notice of the hearing shall be served at least ten (10) days before the date of the hearing, either personally, by first class mail, by certified mail, or by registered mail on

the individual for whom a guardian may be appointed. The issues to be determined at the hearing are whether the individual is in need of a guardian as set forth in Section 202 and if so, who is to be appointed guardian.

Sec. 204. 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 a guardian of the person, guardian of the property, or both.

Sec. 205. Accounting by the guardian.

The Court shall require that the guardian account for his/her handling of the ward's assets no less than once per year. The guardian must keep a written record of expenditures, investments, and any other transactions involving the assets of his/her ward, and to the extent possible must keep receipts and other papers as evidence of these transactions. The guardian's written record and other papers shall be presented to the Court at the time of the accounting.

Sec. 206. Termination of guardianship.

(a) Upon motion of any person, or the Tribe, the Court may provide notice under Section 104 of this Title and hold 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 eighteen (18), or upon a mental incompetent being adjudged by the Court to have regained legal capacity.

Sec. 207. Powers of attorney.

Any competent individual may execute a power of attorney which grants to another individual the right to take any action with respect to the first individual's person or property. The power of attorney must be in writing, must describe the powers being granted, and must be signed by the individual granting the power of attorney in front of two (2) witnesses who must also sign the document. The power of attorney may be revoked by the grantor in writing at any time. A competent individual for purposes of this section is an individual who understands the powers he/she is granting and is not under undue influence or duress from any other person.