

## **CHAPTER X. PROBATE**

### **Section 1. *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 member, or any non-member subject to the jurisdiction of the Court pursuant to Chapter II of the Prairie Island Indian Community Judicial Code.

### **Section 2. *Determination of heirs.***

When any person 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. Any petition must include a list, provided by the petitioner under penalty of perjury, of any other possible heir(s) known to the petitioner, along with information regarding how to contact the possible heirs.

### **Section 3. *Restrictions on Inheritance of Individual Trust/Restriction Lands by Non-Indians***

- a) Non-Indians shall not be entitled to inherit any interest in individual trust or restricted lands within the Prairie Island Indian Reservation or otherwise subject to the jurisdiction of the Tribe provided that:
  - 1. if a Tribal Member dies without a will, the surviving non-Indian spouse and/or children may choose to receive a life estate in as much of the trust or restricted lands as they would have been entitled to take in the absence of this restriction and the remainder shall vest in the Indians who are eligible to inherit;
  - 2. if a Tribal Member dies without a will and has no heir to whom interests in trust or restricted lands may pass, such interests shall escheat to the Tribe, subject to rights as described in paragraph (1) of this section;
  - 3. if a Tribal Member has devised interests in trust or restricted lands to persons who are ineligible for such an inheritance pursuant to this section, the devise shall be voided only if the Tribe acquires such interests by paying to the Secretary of the Interior, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the deceased's death: Provided, That any non-Indian and/or children who have been devised such interests may retain, at their option, a life estate in such interests.
  
- b) Any ineligible heir shall also have the right to renounce their devise in favor of a person or persons who are eligible to inherit.

- c) The right to receive a life estate under this section shall be limited to:
1. a spouse and/or children who, if they had been eligible, would have inherited an ownership interest of ten (10%) percent or more in the tract of land; or
  2. a spouse and/or children who occupied the tract as a home at the time of the deceased's death.

**Section 4. *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 person, 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.

**Section 5. *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 petitioner, the Court and the Tribe. Service on the Tribe shall be made by delivering a copy of the notice to the President, and a copy to the \Secretary of the Tribal Council and to the Tribe's Legal Department.

**Section 6. *Proof of service of notice of hearing.***

Proof of service of the notice of hearing required in Section 4 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.

**Section 7. *Descent of property where there is no valid will.***

- a) When a person dies without a valid will, the person's property that is subject to the Court's jurisdiction shall pass to the following persons:
1. One-half (1/2) of the interest shall be passed to the surviving spouse and the other one-half (1/2) shall be passed in equal shares to the children of the deceased except that if pre-deceased children left offspring, the offspring shall share equally in the interest of their predeceased parent;
  2. If there is no surviving spouse, the interest shall pass in equal shares to the children of the deceased except that if pre-deceased children left offspring, the offspring shall share equally in the interest of their predeceased parent;

3. If there are no surviving children or offspring of any child, the interest shall pass to the surviving spouse;
- b) If there is no surviving spouse and no surviving children or offspring of any child, the interest shall pass to the following persons as long as they survive the deceased:
1. parents or parent of the deceased;
  2. brothers and sisters of the deceased;
  3. grandparents;
  4. aunts and uncles;
  5. nieces and nephews;
  6. cousins of the first degree;
  7. cousins of the second degree;
  8. cousins of the third degree;
  9. If there is no surviving heir as described in this section, the property shall escheat to the Tribe.
- c) As used in this section, the words "children" and "offspring" include adopted children and children of unwed parents where 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; 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.

**Section 8. *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. 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.

**Section 9. *Afterborn heirs.***

Relatives of the decedent conceived before their death and born thereafter but before the estate is distributed inherit as if they had been born during the lifetime of the decedent, provided the afterborn heir lives for at least 120 hours after birth.

**Section 10. *Relatives of half blood.***

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

**Section 11. *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 their duties.

**Section 12. *Claims.***

The Court shall have jurisdiction to adjudicate claims against the estate of the decedent, including claims by the Tribe. Those having claims against the decedent's estate shall present a brief written statement of their claims to the Court thirty (30) days after the notice pursuant to Section 3 of this Title. Valid claims against the estate shall be satisfied before the estate is distributed to the heirs.

**Section 13. *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 3.

**Section 14. *Wills.***

When any person 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 4 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 they were doing and were 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.

**Section 15. *Surviving spouse's elective share.***

When a married person 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 11, 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.

**Section 16. *Revocation of the will by writing or act.***

A will or any part thereof is revoked:

- a) by a subsequent will which expressly revokes the prior will or part of the will or is inconsistent with the prior will; or
- b) by being burned, torn, obliterated or destroyed with the intent and purpose of revoking the will.

**Section 17. *Revocation by divorce or annulment.***

- a) If after executing a will the testator is divorced or their 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.
- b) 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.
- c) Provisions of a will that are revoked solely by this section are revived by the testator's remarriage to the former spouse.

**Section 18. *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 their share by right of representation, and otherwise the bequest shall lapse.

**Section 19. *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 10, 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 Tribe.

**Section 20. *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 they are granting and is not under undue influence or duress from any other person.