



Prairie Island Indian Community

Probate Ordinance¹

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¹ Note of Adoption and Amendment: The Community Council adopted the Probate Ordinance on July 10, 2003, by Resolution Number 03-07-10-60. The Community Council reformatted the ordinance on May 15, 2024, by Resolution Number 24-05-15-130, to increase the usability of this Ordinance and of tribal law and to add Notes of Amendment summarizing the legislative history of this Ordinance. The notes of amendment are for convenience only and should not be relied on as mandatory authority. Unless otherwise stated, the Council did not intend this revision to make any substantive change.

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Section 1. Short Title. This Ordinance shall be known and may be cited as the Prairie Island Indian Community Probate Ordinance.

Section 2. Statement of Purpose, Findings, and Authority.

- a. Purpose. [reserved]
- b. Findings. [reserved]
- c. Authority. [reserved]

Section 3. Definitions.²

- a. “Afterborn Heir” means a relative conceived before and born after the Decedent’s death, but before the Estate is distributed.
- b. “Beneficiary” means a person who is named to receive property in a Will.
- c. “Child(ren)” means a person’s biological children, adopted children, and children of parents where the Tribal Court determines that paternity has been acknowledged or established.
- d. “Community” means the Prairie Island Indian Community in the State of Minnesota, a federally recognized Indian Tribe.
- e. “Community Council” means the constitutionally authorized governing body of the Community.
- f. “Community Member” or “Member” means an enrolled member of the Prairie Island Indian Community.

² Note of Amendment: The Community Council amended the Ordinance on May 15, 2024, by Resolution Number 24-05-15-130, to centralize existing definitions within this section and add definitions for undefined terms.

- g. “Decedent” means a person who died.
- h. “Descend” means the transfer of the Decedent’s property without a Will.
- i. “Devise” means the transfer of the Decedent’s property by the terms of a Will.
- j. “Estate” means the real and personal property owned by a Decedent before the property is Probated or distributed by Intestate Succession.
 - a. “Heir” means a person legally entitled to the property of the Decedent after the Decedent’s death.
 - b. “Homesite Assignments” are parcels of land held in trust by the United States for the Community and governed by the Homesite Assignment Ordinance and Article IX of the Community’s Constitution.
 - c. “Inherit” means to receive money or property as an Heir at the death of the previous holder.
 - d. “Intestate Succession” means distribution of an inheritance without a Will.
 - e. “Issue” means any of the Decedent’s Child(ren)’s Child(ren) or their Child(ren).
 - f. “Non-Member” means a person a person who is not an enrolled member of the Community, whether or not they are an enrolled member of another tribe.
 - k. “Prairie Island Indian Community Reservation” or “Reservation” means all lands and waters within the exterior boundaries of the Prairie Island Indian Reservation, notwithstanding the issuance of any patent, easement, or rights-of-way running through the Reservation, ceded lands, and such other lands without such boundaries as may be added by purchase, exchange, transfer, gift or grant, or which are under the jurisdiction of the Community.
 - g. To “Probate” means to follow the legal process of:
 - 1. Determining whether a Will is valid; and/or
 - 2. Of distributing property according to the terms of a Will.
 - h. “Relative of Half-Blood” means a biological sibling of the Decedent who shares only one biological parent with the Decedent (*i.e.*, a half-sibling).
 - i. “Surviving Spouse” means 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, because of a subsequent marriage, they are again married to the Decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this Ordinance.
 - l. “Testator” is a person who writes and executes a Will.

- m. “Tribal Court” or “Court” means the Prairie Island Mdwakanton Dakota Community Tribal Court.
- n. “Will” means a legal, written declaration of a Testator’s wishes regarding the disposal of their Estate after death.

Section 4. Applicability. [Reserved.]

Section 5. Jurisdiction.³ Except as to trust or restricted land subject to the jurisdiction of the United States, the Tribal Court has jurisdiction to:

- a. Determine Heirs;
- b. Determine the validity of Wills;
- c. Probate the Estates and Wills of any member; and
- d. Probate the Estates and Wills of any Non-Member who is subject to the jurisdiction of the Court under the Prairie Island Indian Community Courts Ordinance.

Section 6. Petition For Determination of Heirs.

- a. When any person dies and leaves property subject to the jurisdiction of the Court, the following parties may file a petition in the Court for a determination of the Heirs of the Decedent and for the distribution of such property:⁴
 - 1. Any person claiming to be an Heir of the Decedent; or
 - 2. The Council.
- b. A petition must include:⁵
 - 1. A copy of the death certificate or other record of death of the Decedent;
 - 2. A list of all other possible Heir(s) or claimants known to the petitioner, including:
 - A. Anyone named in a potentially applicable Will;
 - B. All Issue of the Decedent;
 - C. If the Decedent has no Issue, all of the relatives described in Section 9(b)(1)-(8);
 - D. If the Decedent has no relatives described in Section 9(b)(1)-(8), a request for notice by publication;

³ Note of Amendment: The Community Council amended the Ordinance on May 15, 2024, by Resolution Number 24-05-15-130, to delete the section titled “Restrictions on Inheritance of Individual Trust/Restriction Lands by Non-Indians” to harmonize it with the Community’s Homesite Ordinance and this statement of the Court’s Probate jurisdiction.

⁴ Note of Amendment: The Community Council amended the Ordinance on May 15, 2024, by Resolution Number 24-05-15-130, to clarify that the Council is the acting representative of the Community who may file a petition for determination of Heirs.

⁵ Note of Amendment: The Community Council amended the Ordinance on May 15, 2024, by Resolution Number 24-05-15-130, to add update petition requirements.

3. All information known to the petitioner about how to contact the persons identified in Section 6(b)(2); and
4. A statement, made under penalty of perjury, that the list is complete.

Section 7. Notice of Hearing.⁶

- a. Promptly after a petition is filed, the Clerk of Court must give public notice of the time and place of hearing to determine the Heirs of the deceased by:
 1. 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; and
 2. Publishing notice of the hearing in a newspaper of general circulation on the Reservation at least once per week for three (3) successive weeks prior to the hearing.
- b. For all claimants identified in the petition with sufficient information to contact that claimant, the Clerk of Court must:
 1. If the identified claimant is an individual or organization other than the Community, serve a copy of the notice of hearing on that claimant at least ten (10) days before the date of hearing, either personally, by first class mail, by certified mail, or by registered mail;
 2. If the Community is an identified claimant, serve the Community by delivering a copy of the notice to the President, and a copy to the Secretary of the Community Council and to the Community's Legal Department; and
 3. File a proof of service that consists of one of the following:
 - A. An 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 8. Treatment of Certain Properties.⁷

- a. Homesite Assignments.
 1. Homesite Assignments are the property of the Community and may not be Devised or Probated.

⁶ Note of Amendment: The Community Council amended the Ordinance on May 15, 2024, by Resolution Number 24-05-15-130, to clarify notice provisions, who must give notice to interested parties, and how notice must be given.

⁷ Note of Amendment: The Community Council added this Section on May 15, 2024, by Resolution Number 24-05-15-130, to specify which laws control the treatment of the listed properties.

2. Transfer of a homesite assignment after a holder's death must proceed in accordance with the Community's Constitution and Homesite Assignment Ordinance.

b. Improvements to Homesite Assignments.

1. Improvements to Homesite Assignments are the property of the holder of the homesite assignment, but are regulated by Article IX of the Community's Constitution and by the Homesite Assignment Ordinance.
2. Transfer of improvements to a homesite assignment after a holder's death must proceed in accordance with the Community's Constitution and Homesite Assignment Ordinance.

c. Minor's Trust Assets.

1. Shares of the Prairie Island Indian Community Master Trust that the trustee has allocated to a member in accordance with the Agreement Creating Prairie Island Indian Community Master Trust ("Master Trust Agreement") are personal benefits of the person to whom the share(s) are allocated, and are regulated by that Master Trust Agreement.
2. If the trustee has allocated share(s) of the Trust to a member and that member dies before the trustee has distributed all the allocated share(s), then the distribution of the remaining shares must proceed in compliance with the Master Trust Agreement.
3. It is against the public policy of the Community to distribute share(s) of the Trust to a nonmember adoptive parent without the express direction of the Member. Accordingly, intestate succession to a "parent" under this Ordinance does not include intestate succession of Minor's Trust assets to nonmember adoptive parents. For the purpose of distributing Minor's Trust assets, nonmember adoptive parents are not heirs at law under this Ordinance.

d. Deferred Per Capita Assets.

1. Assets of an account created under the 2016 Deferred Per Capita Distribution Plan ("Deferred Per Capita Plan") are personal to the person for whom the account is established, and are regulated by that Deferred Per Capita Plan.
2. If a member dies before all the assets of an account created under the Deferred Per Capita Plan are distributed, then the distribution of the remaining assets must proceed in compliance with the Deferred Per Capita Plan.

Section 9. Intestate Succession: 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 Descend as follows:
 1. If there is a Surviving Spouse and Children:

- A. One-half (1/2) of the interest shall Descend to the Surviving Spouse; and
 - B. The remaining one-half (1/2) shall Descend in equal shares to the Children of the deceased as follows:
 - i. All living Children of the Decedent will receive their own share;
 - ii. All pre-deceased Children who left surviving Children (grandchildren of the Decedent) will receive a share that is distributed equally among those grandchildren; and
 - iii. No share will Descend to any pre-deceased Child without surviving Children (grandchildren of the Decedent).
2. If there is no Surviving Spouse, the interest shall Descend in equal shares to the Children of the Deceased as follows:
 - A. All living Children of the Decedent will receive their own share;
 - B. All pre-deceased Children who left surviving Children (grandchildren of the Decedent) will receive a share that is distributed equally among those grandchildren; and
 - C. No share will Descend to any pre-deceased Child without surviving Children (grandchildren of the Decedent).
 3. If there are no surviving Children or Children of any Child (grandchildren of the Decedent), the interest shall Descend to the Surviving Spouse.
- b. If there is no Surviving Spouse and no surviving Children or Children of any Child (grandchildren of the decedent), then one hundred percent (100%) of the Estate shall be equally divided between the following person(s) as long as they survive the deceased, and in this order, subject to the limitations of Section 8:
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 Community.

- c. Intestate Succession After Parental Rights Are Terminated.⁸
 1. Parent. If a person’s parental rights with respect to a child have been terminated, then that person may not Inherit from or through that Child by Intestate Succession.
 2. Child. If a person’s parental rights with respect to a child have been terminated, that child may nevertheless Inherit by Intestate Succession from or through that person as though that parent’s rights were not terminated.

Section 10. Afterborn Heirs. Afterborn Heirs who live for at least 120 hours after birth Inherit as if they had been born during the lifetime of the Decedent.

Section 11. Relatives of Half-Blood. Relatives of Half-Blood Inherit the same share they would Inherit as if they were of the whole blood.

Section 12. Protection of the Estate. The Court is empowered to:

- a. Appoint a temporary custodian, administrator, or personal representative to supervise and protect the assets of the Estate;
- b. 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. Require bond from the custodian, administrator, or personal representative for the fulfillment of their duties.

Section 13. Claims. The Court has jurisdiction to adjudicate claims against the Estate of the Decedent, including claims by the Community. Any party with claims against the Decedent’s Estate must present a brief written statement of their claims to the Court within thirty (30) days after the notice issued under Section 7 of this Ordinance. Valid claims against the Estate must be satisfied before the Estate is distributed to the Heirs.

Section 14. Distribution. The Court must distribute all of the Decedent’s property over which the Court has jurisdiction. Before distributing the property, the Court must give notice as provided in Section 7.

Section 15. Wills.

- a. When any person dies with 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, must:
 1. Give notice under Section 7 of this Ordinance; and
 2. Determine the validity of the Will.
- b. A Will is valid if:

⁸ Note of Amendment: The Community Council amended the Ordinance on May 15, 2024, by Resolution Number 24-05-15-130, to allow Children of parents whose rights have been terminated to Inherit from those parents.

1. It was made in writing and signed by the Decedent in the presence of two witnesses who then and there signed the Will as witnesses; and
 2. At the time the Decedent made the Will, the Decedent was 18 years of age or older, 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.
- c. If the Will is determined to be invalid, the Court must determine the Heirs as if the Decedent had died without a Will, and must distribute the property accordingly.
 - d. The determination that a Will is invalid is a final order that may immediately be appealed.
 - e. The Court must enforce a valid Will, subject to the limitations of Section 8, but may not enforce any Will provision that violates any law of the Community. The Court must treat all unenforceable provisions of a Will as severable from the Will.⁹

Section 16. Surviving Spouse's Elective Share.¹⁰ 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 Estate, the Surviving Spouse has a right to take an elective share of one-third (1/3) of the Estate. The Estate does not include a homesite assignment. 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 17. Revocation of the Will by Writing or Act. A Will or any part thereof is revoked:

- a. By a subsequent Will that 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 18. 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 survives divorce or annulment.
- b. Property prevented from Descending to a former spouse because of revocation by divorce or annulment Descends as if the former spouse failed to survive the Decedent.

⁹ Note of Amendment: The Community Council added this subsection on May 15, 2024, by Resolution Number 24-05-15-130, to confirm that Will provisions that violate Community law are not enforceable.

¹⁰ Note of Amendment: The Community Council amended the Ordinance on May 15, 2024, by Resolution Number 24-05-15-130, to harmonize this ordinance with the Homesite Assignment Ordinance and Community Constitution's treatment of Homesite Assignments as Community property.

- c. Provisions of a Will that are revoked solely by this section are revived by the Testator's remarriage to the former spouse.

Section 19. Where a Beneficiary of a Will Does Not Survive the Decedent. If a Beneficiary under a Will who is a grandparent, parent, or Child(ren) of the Decedent does not survive the Decedent, the Issue of the deceased Beneficiary Inherit their share by right of representation. If there are no Issue of the deceased Beneficiary, the bequest shall lapse.

Section 20. Fees and Taxes.¹¹

- a. Court Fee. The probate fee listed on the Approved Court Fees schedule posted on the Court's website must be paid from the assets of the Estate before distribution of the Estate's assets to the Heirs.
- b. Professional Fees. The cost of any unpaid appraisals or sales of assets of the Estate, accounting fees, or other professional fees that the custodian, administrator, or personal representative incurs to administer the Estate must be paid from the assets of the Estate before distribution of the Estate's assets to the Heirs.
- c. Taxes. Applicable taxes on all money, personal property, and real property distributed under this Ordinance are the responsibility of the Heir who Inherits the property.

Section 21. Powers of Attorney.

- a. Any competent individual may execute a power of attorney that grants to another individual the right to take any action with respect to the first individual's person or property.
- b. The power of attorney must:
 - 1. Be in writing;
 - 2. Describe the powers being granted; and
 - 3. Be signed by the individual granting the power of attorney in front of two (2) witnesses who must also sign the document.
- c. The power of attorney may be revoked by the grantor in writing at any time.
- d. For purposes of this section, a competent individual is one who understands the powers they are granting and is not under undue influence or duress from any other person.

Section 22. Records. [Reserved.]

¹¹ Note of Amendment: The Community Council amended the Ordinance on May 15, 2024, by Resolution Number 24-05-15-130, to reform the Ordinance's imposition of probate fees and to specify that Heirs are responsible for any taxes on their Inheritance.

Section 23. Miscellaneous Provisions.¹²

- a. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of this Ordinance, or the application of the provision to other persons or circumstances is not affected.

¹² Note of Amendment: The Community Council amended the Ordinance on May 15, 2024, by Resolution Number 24-05-15-130, to add a severability clause.