

TITLE 10

WILLS

Chapter 10.01

Succession; Decent; Wills

- 10.0101 Succession defined. Succession is the coming in of another to take the property of one who dies without disposing of it by will.
- 10.0102 The personal property of one who dies without disposing of it by will, passes to the heirs of the intestate subject to the control of the Tribal Court for the purposes of administration, and to the possession of any administrator lawfully appointed. All property shall be chargeable with the expenses of administration, the payment of the Decedent's debts, and the allowance to his family, except as otherwise in this Code.
- 10.0103 Order of Succession. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly in this Code.
- (1) If the decedent leaves a surviving spouse, and only one (1) child or the lawful issue of a deceased child, the estate goes one-half ($\frac{1}{2}$) to the surviving spouse and one-half ($\frac{1}{2}$) to the child or issue. If the decedent leaves a surviving spouse and more than one (1) child living, or one (1) child living and lawful issue of one (1) or more deceased children, the estate goes one-third ($\frac{1}{3}$) to the surviving spouse and the remainder in equal shares to his children and to the lawful issue of any deceased child, by right or representation. If the decedent leaves no surviving spouse, but leaves issue, the whole estate goes to issue; and if such issue consists of more than one (1) child living, or one (1) child living and the lawful issue of one (1) or more deceased children, then the estate goes in equal shares to the children living or the child living, and the issue of the deceased child or children by right of representation.
 2. If the decedent leaves no issue and the estate does not exceed one hundred thousand dollars (\$100,000.) in value, all the estate goes

to the surviving husband or wife, if the estate exceeds one hundred thousand dollars (\$100,000.), then the first one hundred thousand (\$100,000.) goes to the survivor, who shall have the right of selecting the same, and of all the property in excess of fifty thousand dollars (\$50,000.) in value, one-half ($\frac{1}{2}$) goes to the surviving husband or wife, and the other half goes to the decedent's father and mother in equal shares, and if either is dead and the whole goes in equal shares to the brothers and sisters of the decedent, and to the children and grandchildren of any deceased brother or sister by right of representation. If the decedent leaves no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either is dead, then to the other.

3. If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children or grandchildren of any deceased brother or sister by right of representation.
4. If the decedent, who was an only child, leaves a surviving husband or wife, and no issue, and no father, nor mother, the whole estate goes to the surviving husband or wife.
5. If the decedent leaves no issue, nor husband, nor wife, and no father, nor mother, nor brother, nor sister, nor decedents of a deceased brother or sister, the estate must go to the next of kin, in equal degree, excepting when there are two (2) or more collateral kindred, in equal degree, but claiming through different ancestors, those claiming through the nearest ancestors must be preferred to those claiming through an ancestor more remote.
6. If there is none capable of succeeding under the previous sub-divisions of this section, the property of the decedent escheats to the Tribe, to be used, or disposed of, for the benefit of the Tribe as a whole.

10.0104 Inheritance by illegitimate children. Every illegitimate child is an heir of the person who in writing, signed in the presence of a competent

witness, acknowledges himself to be the father of such child; and in all cases is heir of his mother, and inherits in whole or in part as the case may be, in the same manner as if he had been born in lawful wedlock. He shall represent his mother equally with her legitimate children by inheriting any part of estate of her kindred, either lineal or collateral, unless before his death his parents shall have inter-married, and his father after such marriage acknowledges him as his child, or adopts him into his family; in which case such child and all legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and the mother respectively their rights in the estates of all children in like manner as if all has been legitimate.

- 10.0105 Inheritance from illegitimate child. If an illegitimate child who has not been acknowledged or adopted by his father, dies intestate, without lawful issue, his estate goes to his mother, or, in case of her death, to her heirs at law.
- 10.0106 Heir takes realty subject to mortgages. When real estate subject to mortgage passes by succession, the heir must satisfy the mortgage out of his own property without resorting to the estate of the decedent.
- 10.0107 Degrees of kindred. The degree of kindred is established by the number of generations, and each generation is called a degree.
- 10.0108 Lineal and collateral consanguinity. The series of degrees form the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor is the collateral line or collateral consanguinity.
- 10.0109 Ascending and descending lines. The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestor with those who descend from him. The second is that which connects a person with those from whom he descends.
- 10.0110 Degrees in direct line. In the direct line there are as many degrees as there are generations. Thus the son is, with regard to the father, in the first degree, the grandson in the second.

- 10.0111 Computations of degrees in collateral line. In the collateral line the degrees are counted by generations from one (1) of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computations the decedent is excluded, the relative included, and the ancestor counted but once. Thus brothers are related in the second degree, uncle and nephew in the third degree, first cousins in the fourth degree, and son on.
- 10.0112 Kindred of half blood inherit. Kindred of the half blood inherit equally with those of the whole blood in the same degree.
- 10.0113 Inheritance by representation. Inheritance or succession by right of representation takes place when the decedents of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. A child born after the death of a parent inherits from that parent as if he had been born in the lifetime of such parent and survived him.
- 10.0114 Non-Indians may take. Non-Indians may take in all cases, by succession and by will, the same as citizens.

Chapter 10.02

Wills: Execution and Revocation

- 10.0201 How wills must be executed and attested. Every will must be in writing, and every will, other than a holographic will, must be executed and attested as follows:
1. It must be signed at the end by the Testator or by some person, in the Testators presence and by his direction.
 2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the Testator to them to have been made by him or his authority.
 3. The Testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his Will.
 4. There must be two (2) attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the Testators request and in his presence.

- 10.0202 Who may make: may dispose of what property. Every person over the age of eighteen (18) years, of sound mind, may execute a will, and may thereby dispose of all or any part of his estate. All property disposed of by will is chargeable with the payment of Testator's debts, except as otherwise expressly provided in this Code.
- 10.0203 What may be disposed of by will. Every estate and interest in personal property may be disposed of by will. Subject to the laws of the United States of America.
- 10.0204 May be made to anyone except unauthorized corporation. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except no corporation may take under a will unless expressly authorized by its charter or by statute to so take.
- 10.0205 Codicil; definition of. A codicil is a supplement or an addition to a will; it may explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in the will.
- 10.0206 Will includes codicil. The term "will" as used in this title includes all codicils as well as wills.
- 10.0207 Codicil; effect of. The execution of a codicil, referring to a previous will, has the effect to republish the will as modified by the codicil.
- 10.0208 Mutual Will. A conjoint or mutual will is valid, but it may be revoked by any of the Testators like any other will.
- 10.0209 Holographic will. A holographic will is one that is entirely written, dated, and signed by the hand of the Testator.
- 10.0210 Compliance with what law required. The execution or revocation of any will in compliance with the laws of the place where executed or of the Testators domicile shall be given legal effect.
- 10.0211 Change of domicile, no effect. Whenever a will or revocation thereof is duly executed in accordance with the law of the place in which the same was made, or the domicile of the Testator, the subsequent change of domicile of the Testator shall have no effect on its validity.
- 10.0212 Revocation of wills. Except as expressly stated in this Code, no written will, nor any part thereof, can be revoked or altered, otherwise than:
- (1) by a written will or other writing of the Testator, declaring such revocation or alter-

ation, and executed with the same formalities with which a will should be executed by such Testator; or

(2) by being burnt, torn, cancelled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the Testator himself, or by some person in his presence and by his direction.

- 10.0213 Cancellation and destruction, how proved. When a will is cancelled or destroyed by any other person than the Testator, the direction of the Testator and the fact of such injury or destruction must be proved by two (2) witnesses.
- 10.0214 Revocation of will in duplicate. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.
- 10.0215 Effect of subsequent will on a will. A prior will is not revoked by a subsequent Will unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will. Otherwise, the prior will remains effectual so far as consistent with the provisions of the subsequent will.
- 10.0216 Revocation of subsequent will; effect upon former will. If, after making a will, the Testator makes a second will, the destruction, or other revocation of the second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction or revocation, the first will is duly republished.
- 10.0217 Marriage revokes will, if wife or issue unprovided for. If after making any will, such Testator marries, and the husband, wife, or issue survives the Testator, such will shall be deemed revoked as to such survivor, unless provision shall have been made for such survivor; and such surviving husband, wife or issue shall be entitled to the same rights in, and to the same share or portion of the estate of the Testator as he or she would have been, if such will had not been made.
- 10.0218 Incumbrance not a revocation. A charge incumbrance upon any estate for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will re-

lating to the same estate which was previously executed; but the devise and legacies therein contained must pass subject to such charge or incumbrance.

10.0219 Agreement for sale: no revocation. An agreement for sale or partial conveyance of property disposed of by a will previously made by the Testator does not revoke such disposal; but the property passes by the will, subject to the same remedies on the Testator's agreement as might be had against the Testator's successors, if the same had passed by succession.

10.0220 Revocation revokes codicil. The revocation of a Will revokes all its codicils.

10.0221 Kindred not mentioned in will, who share in estate. When any Testator omits to provide for any of his children, or for the issue of any deceased child, unless it appears such omission was intentional, such child, if unprovided for by any settlement, succeeds to the same portion of the estate that he would have succeeded to if the Testator had died intestate.

Such share must first be taken from the estate not disposed of by will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devises or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the Testator in relation to some specific provision of the will would thereby be defeated; in such apportionment and a different apportionment, consistent with the intention of the Testator, may be adopted. Such children who have had an equal proportion of the Testator's estate bestowed on them in the Testator's lifetime, by way of advancement, take nothing by virtue of this section.

10.0222 Subscribing witness, rights under will. A subscribing witness to a will may take nothing by such will unless there be two (2) other competent subscribing witnesses to the same. Any devise to a subscribing witness is void only so far as the witness, or anyone claiming under him, is concerned, and such person will be a competent witness so far as the remainder of the will is concerned.

In cases where such witness would have been entitled to share in the estate of the Testator had there been no will, he succeeds to so much of the share as would be distributed to him, not to exceed what he would have taken by the will.

10.0223 Probate of will not prevented by subsequent incompetence of witness. If the subscribing witness to a Will are competent at the time of attesting its execution, their subsequent incompetency does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

Chapter 10.03

Wills Interpretation

10.0301 Intention of Testator governs. A will is to be construed according to the intention of the Testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

10.0302 Will excludes all oral declarations. In case of uncertainty arising upon the face of a will, as to the application of any of its provisions, the Testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

10.0303 Construed together if several. Several testamentary instruments executed by the same Testator, are to be taken and construed together as one instrument. However, if the several parts are irreconcilable the latter parts must prevail.

10.0304 Distinct devise, not affected by inaccuracies. A clear and distinct devise or bequest will not be affected by inference or argument from another part of the will or by an accurate reference in another part of the will.

10.0305 Ambiguities construed by other references. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof in another part of the will.

10.0306 Words taken in ordinary sense. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be ascertained.

10.0307 Every expression given effect. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which shall render any of the expressions inoperative.

- 10.0308 To prevent intestacy. Any mode of interpreting a will shall be preferred which will prevent total intestacy.
- 10.0309 Technical words. Technical words are not necessary to give effect to any species of disposition by a will. If technical words are used, they are to be taken in their technical sense, unless a contrary intention is clearly evident from the context.
- 10.0310 Bequest of residue. A devise or bequest of residue of the Testator's real or personal property passes all real or personal property which he was entitled to bequeath at the time of his death not otherwise effectually bequeathed by his will.
- 10.0311 When bequest passes to those entitled to succeed. A testamentary disposition to "heirs", "relations", "nearest relations", "representatives", or "family", "issue", "decedents", "nearest", or "next of kin", or any person, without other words of qualification, vests the property in those who would be entitled to succeed to the property according to the provisions of Chapter 10.01. Such words are to be used as words of purchase and not of limitation.
- 10.0312 Postponed possession. Words in a will referring to death or survivorship relate to the time of the Testator's death unless possession is actually postponed, then they must be referred to the time of possession.
- 10.0313 Class includes all. A testamentary disposition to a class includes every person answering the description at the Testator's death; but if possession is postponed it also includes all persons coming within the class at the time of possession.
- 10.0314 When real property deemed personal property. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the Testator's death.
- 10.0315 Unborn child included. A child, conceived before the Testator's death but not born until after his death, takes as a member of a class when the disposition to the class vests if such child answers the description of the class.
- 10.0316 Imperfect description corrected without evidence of declarations. When applying a will it is found that there is an imperfect description, or that

no person or property exactly answers the description, mistakes and omissions must be corrected if the error appears from the context of the will, or from extrinsic evidence of the declarations of the Testator as to his intention cannot be received.

- 10.0317 Testamentary disposition, on attaining majority, vests at Testator's death. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the Testator's death.
- 10.0318 Divested only by precise contingency. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the Testator for the purpose.
- 10.0319 Interest in remainder unaffected. The death of a devisee or legatee of a limited interest, before the Testator's death, does not defeat the interest of persons in remainder who survive the Testator.
- 10.0320 Conditional disposition defined. A conditional disposition is one which depends upon the occurrence of some uncertain events, by which it is either to take effect or be defeated.
- 10.0321 Condition precedent. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.
- 10.0322 Condition precedent vests on fulfillment, exception. Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except where such fulfillment is impossible, in which case the disposition vest, unless the condition was the sole motive thereof, and the impossibility was unknown to the Testator, or arose from an unavoidable event subsequent to the execution of the will.
- 10.0323 When condition precedent deemed performed. A condition precedent in a will is to be deemed performed when the Testator's intention has been substantially, though not literally, complied with.
- 10.0324 Condition subsequent, when it divests. A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.
- 10.0325 Owners in common. A devise or legacy given to more than one (1) person vests in them as owners

in common, unless expressly declared in the will to create a joint tenancy.

Chapter 10.04

Wills: General Provisions

10.0410 Legacies classified. Legacies, dispositions of personally by will, are distinguished and designated, according to their nature as follows:

- (1) A legacy of a particular thing, specified and distinguished from all others of the same kind, belonging to the Testator, is specific, if such legacy fails, resort cannot be had to other property of the Testator.
- (2) A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails in whole or in part, resort may be had to the general assets.
- (3) An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets.
- (4) A residuary legacy embraces only that which remains after all the bequests of the will are discharged.
- (5) All other legacies are general legacies.

10.0402 Order in which property applies to debts. The property of the Testator, except as otherwise specially provided in this Code, must be resorted to for the payment of debts in the following order:

- (1) The property which is expressly appropriated by the will for the payment of debts.
- (2) Property not disposed of by the will.
- (3) Property given to a residuary legatees.
- (4) Property which is not specifically devised or bequeathed; and
- (5) all property ratably.

Before any debts are paid, the expenses of the administration and the allowance to the family must be paid or provided for. '

10.0403 The property of a Testator, except as otherwise specially provided in this Code, must be resorted to for the payment of legacies in the following order:

- (1) The property which is expressly appropriated by the will for the payment of the legacies.
- (2) Property not disposed of by the will.
- (3) Property which is devised or bequeathed to a residuary legatee.
- (4) Property which is specifically devised or bequeathed.

10.0404 Income after death. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the Testator's death.

10.0405 Legacy in fear of death satisfied before death. A legacy, or a gift, in contemplation, fear, or peril of a death, may be satisfied before death.

10.0406 Who entitled to letters testamentary. Where it appears from the terms of the will that it was the intention of the Testator to commit the execution thereof and the administration of his estate to a certain person as executor, such person, although not named executor, is entitled to letters testamentary to like manner as if he had been named executor.

10.0407 Authority to executor, to appoint, void. An authority of an executor to appoint an executor is void.

10.0408 Powers of executor, before qualifying. No person has any power as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservative of the estate.

Chapter 10.05

Disposition of Property of Decedent Willfully Killed

10.0501 Definition of terms. As used in this chapter:

- (1) The term "slayer" shall mean any person who willfully and unlawfully takes or procures to be taken the life of another.

(2) The term "decedent" shall mean any person whose life is so taken.

(3) The term property shall include all property and any right of interest therein.

10.0502 Willful slayer shall not benefit by succession, will or in any way. A willful slayer shall not take from the decedent's estate by succession, will, or in any way, nor shall the heirs of the slayer take from him by representation and the slayer shall be deemed to have predeceased the decedent in consideration of all interests unless specifically otherwise in this Code.

10.0503 Disposition of joint property and rights.

(1) One-half ($\frac{1}{2}$) of any property held by the slayer and the decedent as joint tenants, joint owners, or joint obligees shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property, or a decree granting partition.

(2) The provisions of this section shall not affect any enforceable agreement between the parties, or any trust arising because a greater proportion of the property has been contributed by one (1) party than the other.

10.0504 Protection of bona fide purchasers without notice. The provisions of the Chapter shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, purchases from the slayer for value without notice, property which the slayer would have acquired, except for the terms of this Chapter; but all proceeds received by the slayer from such sale shall be held by him in trust for the persons entitled to the property under the provisions of this Chapter, and the slayer shall also be liable for any portion of such proceeds which he may have dissipated, and for any difference between the actual value of the property and the amount of such proceeds.

10.0505 Record of conviction admissible in evidence. The record of his conviction of having willfully and unlawfully killed the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this Chapter.

Chapter 10.06

Simultaneous Death Law

- 10.0601 No sufficient evidence of survivorship. 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 in this Chapter.
- 10.0602 Beneficiaries of another person's disposition of property. Where two (2) 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 those portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.
- 10.0603 Joint tenants or tenants by the entirety. Where there is no sufficient evidence that two (2) joint tenants or tenancy by the entirety have died otherwise simultaneously, the property so held shall be distributed one half ($\frac{1}{2}$) as if the other had survived. If there are more than two (2) joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one (1) bears to the whole number of joint tenants.
- 10.0604 Insurance policies. 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.
- 10.0605 Chapter does not apply if decedent provides otherwise. This Chapter shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this Chapter.

Chapter 10.07

Probate Procedure

- 10.0701 Power of Court as to estates. Probate administration, as provided in this Chapter, may be had when the decedent was a resident of this Reservation at the time of his death or died therein or left property, real or personal therein.
- 10.0702 Petition: contents. A petition for such probate administration may be filed by any person claiming to be an heir, heir at law, legatee, devisee, or creditor of the decedent. Such petition must set forth:
- (1) The name, post office address, and place of death of the decedent.
 - (2) The name, post office address, and relationship of the petitioner to the decedent, or if petitioner is a creditor, the amount of his claim and the origin thereof.
 - (3) Whether or not the decedent left a will and, if so, the original thereof must be attached to the petition or, in case the original cannot be found, a complete explanation of the failure to find such will must be set forth and the contents of such will must be stated as nearly as possible.
 - (4) The names, post office addresses, and respective relationships to the decedent of all of his heirs, heirs at law, legatees, and devisees.
 - (5) So far as known to petitioner, the names and post office addresses of all creditors of the decedent, with the amounts owing to each of such creditors respectively, and with a further statement that if there are other creditors, they are unknown to the petitioner, and cannot with reasonable diligence be ascertained.
 - (6) A statement in detail as to all property, whether real or personal, left by the decedent, giving an adequate legal description of all items of real estate, not under the administration of the United States Government, and a sufficient description to identify all items of personal property, and with the value of each item of real or personal property, according to petitioner's best knowledge, information, and belief.

- (7) If any of the persons designated in sub-divisions (4) and (5) of this section are minors of adjudged mentally incompetent, the names and post office addresses of any guardians of the person and estate, or either, and the names and post office addresses of any guardians ad litem.

Such petition must be verified by the petitioner or his agent or Attorney and if not verified by petitioner personally the reason must be stated. Such verification must set forth that as to the valuations assigned to the decedent's property, the same are correct according to the petitioner's best knowledge, information, and belief, and, as to other matters required, the verification must be positive as of the petitioner's own knowledge or, if on information and belief, must show the source of such information and belief.

10.0703

Notice of hearing on petition. Upon such petition being filed, the Court must fix a time and place for hearing thereon and give notice thereof as provided in this section. Such notice must set forth:

- (1) The name, and post office address, and date of death of the decedent.
- (2) The name and post office address of the petitioner.
- (3) The total value of decedent's estate as set forth in the petition.
- (4) The time and place of hearing.
- (5) That upon such hearing the Court will determine whether such estate is to be distributed forthwith and, if so, to whom the same is to be distributed.
- (6) That upon such hearing, any heir, heir at law, legatee, devisee, creditor, or person interested may appear and assert any right as to such estate, and, if he desires, show cause why such petition should not be granted.
- (7) That if such distribution is made, the claim of any creditor not presented at such hearing will be barred.

Creditor notice must, before the time fixed for the hearing will be barred. ~~Such notice must~~

- 10.0705 Decision of Court. The Court shall proceed, in a summary manner, to adjust and determine the respective rights or all persons interested, including amounts actually owing to the respective creditors, if any, and the rights of such creditors as to priority. If it is claimed that the decedent left a will, the same must be proved as provided by this Code. Upon determining and adjusting the rights of all persons interested, including creditors, if any, the Court shall enter Findings of Fact and Conclusions of Law. Such Findings of Fact must show:
- (1) The name, residence, and place of death of the decedent.
 - (2) Each item of personal property, and any real property over which the Court has jurisdiction, left by the decedent with its value as determined by the Court.
 - (3) The reasonable expenses of petitioner in the proceeding.
 - (4) All facts relevant to the setting aside of exempt property, whether real or personal, or both, including the names of the persons entitled thereto, and the basic facts on which they are entitled thereto.
 - (5) The amount owing to each creditor, if any, with creditors classified according to priority.
 - (6) The heirs, heirs at law, legatees, and devisees entitled to share in the estate, and the respective shares or amounts which they are entitled to receive.

10.0706 Decree of distribution. Upon entry of such Findings of Fact and Conclusions of Law, the Court shall enter a decree, based on such Findings and Conclusions, and which shall distribute the estate as follows, and in the order of priority set forth:

- (1) To reimbursement of the petitioner for reasonable expenses incurred in the proceedings.
- (2) If decedent left surviving him persons entitled to claim as exempt the whole or any portion of said estate, or who are entitled to use and occupancy of any homestead, to such persons to the full extent of any and all such rights.

- (3) To creditors, according to the rights of such creditors as to priority, under the provisions of this Title, and if the estate is sufficient to satisfy in full the amounts found owing to creditors of any class, then pro rata to such creditors in such class.
- (4) To the heirs, heirs at law, legatees, or devisees of the decedent according to the provisions of this Title.

No further action whatsoever shall be required as to the distribution of such estate. The decree of the Court shall have the force and effect as a final decree. A certified copy of such decree must be filed and recorded in the office of the Tribal Clerk.

10.0707

Sales may be made when necessary. If necessary for the distribution of the estate, the Court may order the sale of any property, whether real or personal, and for that purpose may appoint an agent to act for the Court for the purposes of such sale and may direct the terms and conditions on which such sale may be made, and the notice of sale to be given, or dispense with such notice entirely, if the Court deems it advisable. The order appointing such agent shall specify his authority and may require a bond or not, as the Court sees fit. In case of such sale, the Court may delay the entry of the decree distributing the estate until the sale is made. An order of the Court confirming any such sale shall have the same force and effect as a similar order under other provisions of this Title.

Chapter 10.08

Definitions

- (1) By right of representation--the principle upon which the issue of a deceased person take or inherit the share of an estate which their immediate ancestor would have taken or inherited, if living the taking or inheriting "per stirpes".
- (2) Per Stirpes--by root or stocks; by representation. This term denotes that method of dividing an intestate estate where a class or group of distributees take the share which their deceased would have been entitled to taking thus by their right of representing such ancestor, and not as so many individuals.

- (3) Collateral kindred--by the side at the side. Not lineal, but upon a parallel or diverging line, related to, (kindred); related by birth or consanguinity. Relatives by blood. Next of kin. Kindred of the whole blood, preferred to kindred of the half blood.
- (4) Degree--in the law of descent and family relations; a step or grade, the distance or number of removes, which separates two (2) persons who are related by consanguinity. Thus, we speak of a brother as being in the second degree or kindred.
- (5) Republish--the re-execution or re-establishment by a Testator of a will which he had once revoked. A second publication of a will, either expressly or by construction.
- (6) Domicile--that place where a man has his true, fixed and permanent home and principal establishment, and to which whenever his is absent he has the intention of returning. His legal residence, as distinguished from his temporary place of abode.
- (7) Technical words--words or phrases in an agreement that will not be allowed to defeat the manifest intention of the parties as expressed in the instrument.
- (8) Bequest--a gift by will of personal property; a legacy. A testamentary disposition of the Testator's personality.
- (9) Residue--the surplus of a testator's estate remaining after all the debts and particular legacies have been discharged.
- (10) Intestacy--the state or condition of dying without having made a valid will, or without having disposed by will of a part of his property.
- (11) Words of purchase--words which denote the person who is to take the estate.
- (12) Words of limitation--mark the period which is to determine the estate. It specifies the utmost time of continuance of the estate. In a devise of land by a husband to his wife "so long as she remains his widow" are used as words of limitation and not words of condition.

- (13) Class--the order or rank according to which persons or things are arranged or assorted.
- (14) Majority--full age; the age at which; by law, a person is entitled to the management of his own affairs and to the enjoyment of civic rights.
- (15) Vests--to give an immediate, fixed right of present or future enjoyment. To accrue to; to clothe with possession.
- (16) Testator--one who makes or has made a testament or will; one who dies leaving a will.
- (17) Contingency--the possibility of coming to pass; an event which may occur; a possibility.
- (18) Remainder--in wills, the remainder of an estate are usually and ordinarily understood as meaning that part of the estate which is left after all of the other provisions of the will have been satisfied.
- (19) Divests--to deprive, to take away; to withdraw. Usually spoken of on authority, power, property, or title; as the estate is divested.
- (20) Owners in common--are generally defined to be such as hold the same property together by several and distinct titles.
- (21) Joint tenancy--have one (1) and the same interest, accruing by one (1) and the same conveyance, commencing at one (1) and the same time, and held by one (1) and the same undivided possession. The grand incident of joint tenancy is survivorship.
- (22) Legacy--a disposition of personality by will.
- (23) Letters testamentary--the formal instrument of authority and appointment given to an executor by a proper Court, empowering him to enter upon the discharge of his office as executor.
- (24) Executor--a person appointed by a testator to carry out the directions and requests in his will, and to dispose of the property according to his testamentary provisions after his decease.

- (25) Devolution--the transfer or transition from one (1) person to another of a right, liability, title, estate, or office.
- (26) Simultaneous--a word of comparison meaning that two (2) or more occurrences or happenings are identical in time.
- (27) Tenants by the entirety--created by a conveyance to husband and wife, whereupon each becomes seized and possessed of the entire estate and after the death of one (1) of the survivor takes the whole. Can be terminated only by joint action of husband and wife during their lives.
- (28) Probate--the act or process of proving a will.
- (29) Resident--one (1) who has his residence in a place. Living in a particular locality.

