

**TITLE 10  
PROBATE ORDINANCE**

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**TITLE 10**  
**PROBATE ORDINANCE**  
(effective 5/29/07)

**CHAPTER 10-1     GENERAL PROVISIONS**

**§10-1-1         Legislative Findings**

The Nez Perce Tribal Executive Committee (NPTEC), the governing body of the Nez Perce Tribe hereby finds that the loss of lands from Indian ownership, and the increase in fractionated ownership of many lands held by tribal members threatens the long term viability of the Nez Perce Reservation as a homeland for the exclusive use of the Tribe and its members; the NPTEC further finds that authorizing and directing the Nez Perce Tribal Court to hear and determine probate proceedings will simplify the probate process for surviving family members, will encourage tribal members to plan for the transfer of their property upon their deaths, and further strengthen the Tribe's powers of self-governance.

**§10-1-2         Declaration of Policy**

The Nez Perce Tribal Executive Committee (NPTEC) hereby declares that the policy of the Nez Perce Tribe is to prevent further deterioration of the land base of the Tribe, to prevent as far as possible the further fractionation of ownership of tribal members' property, to encourage tribal members to plan for the transfer of their property upon their deaths by making wills, and to strengthen the Tribe's self-governance by providing a means for probating estates in Nez Perce Tribal Court.

The enactment of the Nez Perce Tribal Probate Code preempts the present usage of the Idaho Uniform Probate Code except as hereinafter specifically provided to the contrary and places jurisdiction of any and all probate matters concerning any person who is a member of, or eligible for enrollment in a federally recognized Indian tribe, or who does not otherwise meet the definition of "Indian" in the Indian Land Consolidation Act, as amended, and any non-Indians who may elect coverage with the Nez Perce Tribal Court.

**§10-1-3         Effective Date**

This title shall take effect thirty days after the date of its enactment by NPTEC Resolution subject to applicable federal law. This title shall not affect the validity or terms of wills executed before the effective date, except that the restrictions on transfer of trust and restricted property in § 10-1-12 shall apply to all persons and property subject to this Title on its effective date.

**§10-1-4         Severability**

If any section, clause, or provision of this code, or its application to any person or circumstance, is declared invalid for any reason by a court of competent jurisdiction, the remaining provisions of the code or application to any other person or circumstance shall still be valid and in effect.

**§10-1-5         Reference to Foreign Law**

The tribal court is encouraged to refer to foreign law, including laws of other tribes and states, federal law, common law and uniform or model laws, for assistance in resolving issues of

probate and inheritance law on which this Title is silent.

### **§10-1-6 Duties of Land Services Department**

Land Services Department will perform former federal functions pursuant to an annual compact agreement with the U.S. Department of the Interior and any other duties assigned by the Nez Perce Tribal Executive Committee which are related to management and probate of real and personal property located on the Nez Perce Reservation or owned by an enrolled Nez Perce tribal member.

### **§10-1-7 Definitions and Interpretive Rules**

For the purposes of this Title, words used in the present tense include the future, the singular number include the plural, the masculine form includes the feminine; the word "shall" is mandatory and not permissive; and the term "this Title" shall be deemed to include all amendments hereafter made to this Title. Unless specifically defined below, words or phrases used in this Title shall be interpreted so as to give them the meaning they have in common usage and to give the Title it's most reasonable application.

When used in this Title, unless otherwise required from the context:

(a) "Codicil" shall mean a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(b) "Community property" shall mean all property acquired during a marriage by either husband or wife, including the rents and profits of the separate property of the husband and wife, unless, by the instrument by which any such property is acquired by the spouse, it is provided that the rents and profits thereof shall be applied to his/her sole and separate use. Real property conveyed by one (1) spouse to the other shall be presumed to be the sole and separate estate of the grantee.

(c) "Custom and Tradition" shall mean:

(1) "Custom" means a range of practice that by common adoption and long, unvarying habit by the Nez Perce people, has come to have the force of law.

(2) "Tradition" means past Nez Perce customs and usages that influence or govern present acts or practices.

(d) "Decedent" shall mean a deceased person.

(e) "Descendant" of an individual means all of the individual's descendants of all generations, with relationship of parent and child at each generation, being determined by the definition of child and parent contained in this section.

(f) "Degree of kinship" shall mean the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(g) "Devise" means a testamentary disposition of real or personal property or means

to dispose of real or personal property by will.

(h) "Distribution" means the judicially-determined apportionment and division after the payments of debt and charges of the assets of an estate, among those legally entitled to share.

(i) "Eligible to be enrolled" means a person who in fact meets the criteria for enrollment in the Nez Perce Tribe, under Tribal law, whether or not such person is an enrolled member.

(j) "Estate" shall mean all of the assets and liabilities of a deceased person.

(k) "Exempt property" means a decedent's holdings and possessions that, by law, a creditor cannot attach to satisfy a debt.

(l) "Heirs" shall mean those persons, including the surviving spouse, who are entitled under the rules of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(m) "Indian Finery and Indian Artifacts" shall mean:

(1) Indian Finery shall mean items of personal adornment, made in the Indian tradition, by human craft.

(2) Indian Artifacts shall mean an object, irrespective of age, made by human craft and in the Indian tradition.

(n) "Intestate" shall mean that a person has died without making a valid will as to some or all of his assets. Such property will pass to other persons under the intestate succession rules of this Title.

(o) "Inventory and Appraisalment" shall mean a detailed list of assets and their just and true value, typically provided by an executor or administrator of a decedent's estate and submitted to the Probate Court.

(p) "Issue" shall mean all the lineal descendants of the ancestor including all lawfully adopted children. Children who have been cared for or considered adopted by custom shall not be considered issue of the ancestor unless lawfully adopted. Posthumous children are considered as living at the death of their parent.

(q) "Marriage" means the civil status, condition or relations of a man and woman considered united in law as husband and wife. (See Chapter 3-4, §4-5-1 (o) of NPTC)

(r) "Net community estate" shall mean the real and personal property of a decedent the community exclusive of exempt property, the family allowance and enforceable claims against, and debts of, the decedent or the estate.

(s) "Net separate estate" shall mean the real and personal property of a decedent exclusive of exempt property, the family allowance and enforceable claims against, and debts of, the decedent or the estate.

(t) "Nonprobate asset" shall mean those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or

arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or similar document.

(u) "Parent" shall mean the biological or lawful adoptive mother or father of a person. It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.

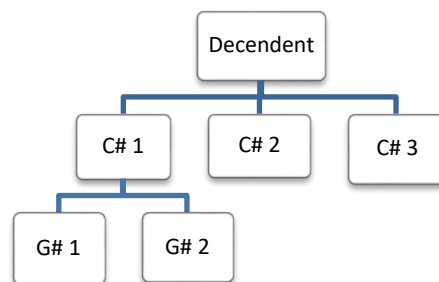
(v) "Personal property" shall mean any property that is not included in the definition of real estate excluding Indian finery and Indian artifacts.

(w) "Personal representative" shall mean that person appointed by the court to carry out the powers and duties conferred by this Title on behalf of the estate.

(x) "Public Administrator" shall mean the employee of the Nez Perce Tribe appointed by the Nez Perce Tribal Executive Committee as personal representative to administer estates where appointment of another personal representative is not sought, or where no other suitable person is willing and available to serve.

(y) "Real estate" shall mean all interests and estates in land, including leasehold interests and improvements to land such as houses or other buildings which have been lawfully affixed to the land. A mobile or modular home which is lawfully located on individual trust property and subject to a security interest, mortgage, promissory note or other financing agreement or which is located on tribal fee or trust property shall be considered personal property for purposes of this title. All other mobile and modular homes shall be considered real estate for purposes of this title.

(z) "Representation" shall mean a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the deceased as follows:



After determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the deceased- who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the deceased-but who left issue surviving the deceased (See chart for "C" = children); each share of a deceased person in the nearest degree shall be divided among those of the deceased's issue who survive the deceased and have no ancestor then living who is in the line of relationship between them and the deceased, those more



remote in degree (See chart for "G" = grandchildren) taking together the one share which their ancestor would have taken had he or she survived the deceased.

If C#1 died prior to the "Deceased" the children of C#1 would share equally in the one share the decedent left to their parent. So, the grandchildren each take one-half of C#1's one-third share.

(aa) "Separate property" shall mean all property of either the husband or the wife owned by him/her before marriage, and that acquired afterward either by gift, devise, bequest or descent, or that which either spouse acquires with proceeds of his/her separate property, by way of moneys or other property.

(bb) "Spouse" shall mean a party to a marriage recognized by any jurisdiction, including the Nez Perce Tribe. It shall not include a party to a common law marriage unless the marriage is recognized by the jurisdiction in which the arrangement was entered.

(cc) "Testator" means a person who has made a will or dies leaving a will.

(dd) "Trust or restricted property" shall mean any property, title to which is held in trust or restricted fee status by the United States for the benefit of a member of a federally recognized Indian tribe or a tribe.

(ee) "Will" shall mean an instrument validly executed as required by this Title that disposes of an individual's estate at death.

#### **§10-1-8 Persons and Property Subject to Title - Domicile Presumed**

This Title applies to all enrolled members of a federally recognized Indian tribe and all persons eligible for enrollment in a federally recognized Indian tribe, or who otherwise meet the definition of "Indian" under the American Indian Probate Reform Act of 2004 with regard to all real and personal property of such persons to the extent they are domiciled on the Nez Perce Reservation. For purposes of this title, an enrolled member of the Nez Perce Tribe shall be presumed to be domiciled within the Reservation, regardless of residence elsewhere, in the absence of proof of domicile in another location.

#### **§10-1-9 Jurisdiction of Tribal Court**

The Nez Perce Tribe Tribal Court shall have all authority necessary to take evidence on and determine the validity of any will or other document, the qualifications of any person to be a personal representative, the family relationships of the decedent, or any other matter necessary and relevant to determining the proper distribution of a decedent's estate under this Title. The court shall have the broadest possible authority to execute its duties and responsibilities under this Title. It shall have authority to probate all estate interests subject to this Title which do not come within the exclusive jurisdiction of the United States.

#### **§10-1-10 Application to Probate of Trust and Restricted Property by the United States Department of the Interior**

United States Department of the Interior Administrative Law Judges or others hearing probates of trust and restricted property subject to this Title shall apply the provisions of this Title to the maximum extent permitted by law.

**§10-1-11 Custom and Tradition - Distribution of Indian Finery and Indian Artifacts**

(a) Notwithstanding the provisions of this Title relating to descent and distribution, Indian artifacts and Indian finery belonging to the decedent shall be distributed in accordance with the customs and traditions of the Nez Perce Tribe. To the extent that the family disagrees as to what that custom and tradition is, the tribal court will make a determination based on hearing of evidence in accordance with the Nez Perce Rules of Evidence, Chapter 2-8 of the Nez Perce Tribal Code.

(b) Distribution under this section shall be in accordance with the directions left by the decedent, if any, or if the decedent leaves no directions, personal and other family items will be distributed according to the customs and traditions of the family or the Nez Perce Tribe. To the extent that the family disagrees as to what that custom and tradition is, the tribal court will make a determination based on hearing of evidence in accordance with the Nez Perce Rules of Evidence, Chapter 2-8 of the Nez Perce Tribal Code.

**§10-1-12 Restrictions on Testation and Inheritance of Trust or Restricted Property**

(a) Trust or Restricted Property Limitations.

After the effective date of this Title, only persons enrolled or eligible for enrollment in a federally recognized Indian tribe or who otherwise meet the definition of "Indian" or "eligible heir" in the Indian Land Consolidation Act, as amended, shall take by intestate succession or by will any interest in the restricted or trust property of a deceased member of the Nez Perce Tribe, or which consists of any interest in the rents, issues, or profits from an allotment or assignment of trust or restricted property within the Nez Perce Reservation, except that a surviving spouse or issue who is not a member of, or eligible for enrollment in a federally recognized Indian tribe, or who does not otherwise meet the definition of "Indian" in the Indian Land Consolidation Act, as amended, may receive by inheritance or devise the use for life of the restricted or trust lands of the deceased. Any testamentary gift or devise purporting to transfer an interest in the decedent's trust or restricted property to a person who is not a member of, or eligible for enrollment in a federally-recognized Indian tribe, or who does not otherwise meet the definition of "Indian" in the Indian Land Consolidation Act, as amended, may receive by inheritance or devise the use for life of the restricted or trust lands of the deceased.

(b) Prohibited Transfers Shall Fail

Any testamentary bequest or devise purporting to transfer an interest in the decedent's trust or restricted property to a person who is not a member of, or eligible for enrollment in a federally-recognized Indian tribe, or who does not otherwise meet the definition of "Indian" in the Indian Land Consolidation Act, as amended, shall fail, except that a gift or devise of such property to such a person who is a surviving spouse or issue of the decedent shall be interpreted as a gift or devise of a life estate without regard to waste in such property. Any failed bequest shall be treated as part of the decedent's residue of the estate.

**CHAPTER 10-2 INTESTATE SUCCESSION****§10-2-1 Succession Rules**

The net estate of a person dying intestate shall descend subject to the restrictions of § 10-1-12 of this Title and shall be distributed as follows:

- (a) The surviving spouse shall receive the following share:
- (1) all of the decedent's share of the net community estate; and
  - (2) one-half (1/2) of the net separate estate if the intestate is survived by issue; or three quarters (3/4) of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his parents, or by one or more of the issue of one or more of his parents; or all of the net separate estate, if there is no surviving issue nor parent nor issue of the parent.
- (b) The share of the net estate not distributed to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:
- (1) to the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.
  - (2) If the intestate not be survived by issue, then to the decedent's parent or parents who survive the intestate, in equal shares.
  - (3) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.
  - (4) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparents or grandparents shall take one-half.
  - (5) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be unequal degree, then those of more remote degree shall take by representation.

### **§10-2-2 Inheritance by Child**

For the purposes of inheritance by, through, and from any child, the effects and treatment of the parent-child relationship shall not depend on whether or not the parents have been married.

### **§10-2-3 Inheritance by Adopted Child**

The lawfully adopted child shall not be considered an heir of his biological parent unless

the decree of adoption provides for the continuation of inheritance rights. This provision shall not prevent a biological parent from giving or devising property to his adopted child by will. A child who has been cared for, or considered adopted by custom, but not by law, shall remain an heir of his biological parent.

#### **§10-2-4 Escheat for Want of Heirs**

Whenever any person dies, leaving property subject to the jurisdiction of the Nez Perce Tribe, and not being survived by any person entitled to the same under the laws of the Nez Perce Tribe, such property shall be designated as escheat property and shall pass to the Nez Perce Tribe.

### **CHAPTER 10-3 WILLS**

#### **§10-3-1 Who May Make a Will**

Any person of sound mind who is eighteen years of age or older, or a minor who is emancipated or the parent of a child, may, by last will, devise all of his estate, both real and personal, subject to the provisions of this title.

#### **§10-3-2 Requirements of Wills**

Every will shall be in writing and signed by the testator or some other person under his direction in the presence of the testator. The will shall be attested by two or more competent witnesses, not having an interest in the testator's estate or in the will, signing their names to the will in the presence of the testator by his direction or request: Provided, that a last will and testament, executed outside the Nez Perce Reservation, in the mode prescribed by law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of the Nez Perce Tribe; Provided further, however, that any will purporting to devise an interest in trust or restricted lands shall in addition to the provisions of this section meet all the lawful requirements of the Bureau of Indian Affairs found in Title 25 of the United States Code and Title 25 of the Code of Federal Regulations as presently enacted or hereafter amended.

#### **§10-3-3 Revocation of Will**

A will, or any part thereof, can be revoked by:

- (a) a subsequent valid written will; or
- (b) by being burned, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the will, by the testator himself or by another person in his presence and by his direction in the presence of two competent witnesses not having an interest in the outcome. The facts of such injury or destruction, including the direction of the testator where the action is done by another, must be proved by two competent witnesses, not having an interest in the outcome.
- (c) If a will has been revoked, the testator shall notify the Land Services Department of its revocation, using a form designated for that purpose. Failure to notify the Land Services Department of a will's revocation does not affect the validity of the revocation or any subsequent will.

**§10-3-4 Subsequent Divorce of Testator**

A divorce, subsequent to the making of a will, shall revoke the will as to the divorced spouse.

**§10-3-5 Revival**

If, after making any will, the testator shall duly make and execute a second will, the destruction, cancellation or revocation of the second will shall not revive the first will. If the subsequent will is determined invalid, the first will shall not be deemed revoked.

**§10-3-6 Death of Related Devisee or Legatee Before Testator**

When any estate shall be devised or bequeathed to any child, grandchild, or other relative of the testator, and such devisee or legatee shall die before the testator, having lineal descendants who survive the testator, such descendants shall take the estate, real and personal, as such devisee or legatee would have done in the case he had survived the testator; if such descendants are all in the same degree of kinship to the predeceased devisee or legatee they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation with respect to such predeceased devisee or legatee. A spouse is not a relative under the provisions of this section.

**§10-3-7 Lapsed Bequest or Devise**

(a) If a will makes a bequest to a person on the condition that the person survive the testator and the person does not survive the testator, then, unless otherwise provided, the bequest lapses and falls into the residue of the estate to be distributed under the residuary clause of the will, if any, but otherwise according to the laws of descent and distribution.

(b) If the will gives the residue to two or more persons, the share of a person who does not survive the testator passes, unless otherwise provided, to the other person or persons receiving the residue, in proportion to the interest of each in the remaining part of the residue.

(c) If the will makes a bequest or devise which fails the bequest lapses and falls into the residue of the estate to be distributed under the residuary clause of the will, if any, but otherwise according to the laws of descent and distribution.

**§10-3-8 Estate for Life – Remainders**

If any person, by last will, or by the operation of tribal law, shall devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and unless the remainder is specially devised, it shall revert to the heirs at law of the testator.

**§10-3-9 Will to Operate On After Acquired Property**

Any estate, right, or interest in property acquired by the testator after the making of his will shall pass as if title thereto was vested in him at the time of making the will, unless the language of the will makes clear the testator's intention was otherwise.

**§10-3-10 Contribution Among Devisees and Legatees**

When any testator in his last will shall give any personal property or real estate to any

person and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees, and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

### **§10-3-11 Intent of Testator Controlling**

All courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator in all matters brought before them shall control unless prohibited by law.

### **§10-3-12 Omitted Child Born or Adopted After Execution of Will**

(a) If a will fails to name or provide for a child of the decedent who is born or adopted by the decedent after the will's execution and who survives the decedent, referred to in this section as an "omitted child," the child must receive a portion of the decedent's estate as provided in subsection (c) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.

(b) In determining whether an omitted child has been named or provided for, the following rules apply:

- (1) A child identified in a will by name is considered named whether identified as a child or in any other manner.
- (2) A reference in a will to a class described as the children, descendants, or issue of the decedent who are born after the execution of the will, or words of similar import, constitutes a naming of a person who falls within the class. A reference to another class, such as a decedent's heirs or family, does not constitute such a naming.
- (3) A nominal interest in an estate does not constitute a provision for a child receiving the interest.

(c) The omitted child must receive an amount equal in value to that which the child would have received if the decedent had died intestate, unless the court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. In making the determination, the court may consider, among other things, the various elements of the decedent's dispositive scheme, provisions for the omitted child outside the decedent's will, provisions for the decedent's other children under the will and otherwise, and provisions for the omitted child's other parent under the will and otherwise.

(d) In satisfying a share provided by this section, the bequests made by the will abate as provided in § 10-8-7.

### **§10-3-13 Omitted Spouse Married After Execution of Will**

(a) If a will fails to name or provide for a spouse of the decedent whom the decedent marries after the will's execution and who survives the decedent, referred to in this section as an "omitted spouse," the spouse must receive a portion of the decedent's estate as provided in subsection (c) of this section, unless it appears either from the will or from other clear and

convincing evidence that the failure was intentional.

(b) In determining whether an omitted spouse has been named or provided for, the following rules apply:

- (1) A spouse identified in a will by name is considered named whether identified as a spouse or in any other manner.
- (2) A reference in a will to the decedent's future spouse or spouses, or words of similar import, constitutes a naming of a spouse whom the decedent later marries. A reference to another class such as the decedent's heirs or family does not constitute a naming of a spouse who falls within the class.
- (3) A nominal interest in an estate does not constitute a provision for a spouse receiving the interest.

(c) The omitted spouse must receive an amount equal in value to that which the spouse would have received if the decedent had died intestate, unless the court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. In making the determination the court may consider, among other things, the spouse's property interests under applicable community property or quasi-community property laws, the various elements of the decedent's dispositive scheme, and a marriage settlement or other provision and provisions for the omitted spouse outside the decedent's will.

(d) In satisfying a share provided by this section, the bequests made by the will abate as provided in § 10-8-7.

#### **§10-3-14 Omission of Spouse or Child Living at Execution of a Will**

If a will fails to provide for a spouse to whom the decedent was married at the time of the execution of a will, or a child born or adopted and living at the time of the execution of the will, the spouse or child so excluded shall receive that portion of the estate to which he would have been entitled under the rules of intestate succession unless the decedent's will specifically and clearly states the intent to exclude the named spouse or child.

#### **§10-3-15 Duty of Custodian of Will**

Any person having made a will shall provide a copy of the will under seal to Land Services Department and shall notify Land Services Department of the location of the original will. Any person having custody or control of a will shall, within 30 days after receiving knowledge of the death of the testator, deliver said will to the Land Services Department. The Land Services Department shall provide the tribal court with a copy of the will, or the original where there is no trust or restricted property to probate, upon receiving knowledge of the death of the testator.

### **CHAPTER 10-4 PROBATE PROCEEDINGS**

#### **§10-4-1 Initiation of Probate Proceedings**

(a) Probate proceedings shall be initiated by a Petition For Probate filed with the Nez Perce Tribal Court containing:

- (1) The name of the decedent.
- (2) The decedent's enrollment status with the Nez Perce Tribe. (Enrolled, eligible for enrollment, enrolled in another federally recognized Indian tribe). [versus otherwise meeting the definition under AIRPA]
- (3) The date of death of the decedent.
- (4) The names and addresses of the decedent's surviving family so far as such information is known to the petitioner.
- (5) Whether the decedent left a will, and, if so, the names and addresses of the beneficiaries under the will.
- (6) A general description of the decedent's estate subject to probate in the Nez Perce Tribal Court, and a general description those portions of the decedent's estate, if any, that are not subject to probate in the Nez Perce Tribal Court, including, but not limited to any interests in trust or restricted property.
- (7) A statement of whether any probate proceedings are pending in any other jurisdiction, and, if so, the name and address of the Personal Representative appointed in such proceedings.
- (8) A request for appointment of a Personal Representative and a statement of the qualifications of the proposed Personal Representative.
- (9) A request for approval of the last will and testament of the decedent, or a request that the court find that the decedent died without a valid will, if applicable.
- (10) A verification under oath or penalty of perjury signed by the petitioner that the contents of the petition are true and correct.

(b) The petitioner shall file with the petition, or as soon after filing as such documents can be obtained:

- (1) A certified copy of the decedent's death certificate.
- (2) The original or a true and correct copy of any will found or document alleged to be the last will and testament of the decedent. If no original is available, the petition shall include a description of the efforts made to obtain the original and any facts relating to its absence or insure that a true and correct copy is provided by the Land Services Department.

(c) The Court shall set a date for hearing not less than sixty (60) days following submission of all required documents and mail notice of such hearing and publish notice in local newspaper at the Court's discretion.

#### **§10-4-2 Qualifications of Personal Representative; Priority**

Powers and responsibilities for administration of an estate as Personal Representative



shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

- (a) The person or persons named to serve as Personal Representative in the decedent's last will and testament.
- (b) The surviving spouse or such person as the surviving spouse may request to have appointed.
- (c) The next of kin in the following order 1) Child or children; 2) father or mother; 3) brothers or sisters; 4) grandchildren; 5) nephews or nieces.
- (d) One or more of the beneficiaries or transferees of the decedent's probate or nonprobate assets.
- (e) If the persons so entitled shall fail for more than forty days after the death of the decedent to present a petition for letters of administration, or if it appears to the satisfaction of the court that there is no next of kin, or they waive their right, or if no suitable person is available and willing, then the court may appoint the Public Administrator to administer such estate.

#### **§10-4-3 Parties Disqualified - Result of Disqualification After Appointment**

The following persons are not qualified to act as personal representatives: Corporations, minors, persons of unsound mind, or persons who have been convicted of any felony or of a misdemeanor involving moral turpitude, or convicted of any criminal offense of the Nez Perce Tribal Code, which would be equivalent to any felony or misdemeanor involving moral turpitude under state or federal law. When any person to whom Letters of Administration have been issued becomes disqualified to act because of becoming of unsound mind or being convicted of any felony or of a misdemeanor involving moral turpitude or convicted of any criminal offense of the Nez Perce Tribal Code which would be equivalent to any felony or misdemeanor involving moral turpitude under state or federal law, the court shall revoke his or her letters. A nonresident of the Nez Perce Reservation may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the Reservation or who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate. No person shall be disqualified from serving as a Personal Representative by virtue of the fact that he may be beneficiary of the estate, but such person shall always be mindful of the fact that he serves the estate in a fiduciary capacity and must put the interests of the estate ahead of his personal interest.

#### **§10-4-4 Powers and Duties of Personal Representative**

The Personal Representative shall have the power and duty to:

- (a) Take possession and control of all the decedent's assets subject to the probate jurisdiction of the court, and to preserve such assets for the benefit of the estate;
- (b) Give all notices to family members, heirs, beneficiaries, government agencies or creditors as required or allowed by this Title;
- (c) Act in a fiduciary capacity in the name of the estate, subject to applicable orders of the court, to settle any claim against the estate, collect any debts owed to the estate, and

initiate or defend any litigation involving the estate;

(d) Administer, in a fiduciary capacity, the affairs of the estate to ensure that the estate is preserved and distributed in accordance with the decedent's directions expressed in his or her last will and testament, or in the absence of such a will, in accordance with the rules of intestate succession set out in this Title;

(e) Exercise any power granted by the decedent's last will and testament or by order of the court; and

(f) Avoid any conflict of interest between his personal interests and the interests of the estate by always placing the interests of the estate ahead of his personal interest.

(g) The personal representative shall serve without bond, unless a bond is required by the court, or by the terms of decedent's will.

**§10-4-5 Hearing; Order Initiating Probate; Appointment of Personal Representative and Letters of Administration**

(a) Within 30 days of the filing of a petition for probate, the tribal court shall hold a hearing during which the court shall review the sufficiency of the petition and examine the petitioner under oath and determine whether the decedent died having left a valid will or intestate.

The court shall take evidence as to the validity of any will, and as to the qualifications of the petitioner or other person to be the personal representative. In the absence of an original, the court may permit a true and correct copy of a will to be probated.

Upon findings by a preponderance of the evidence that:

- (1) The petitioner or another person is qualified and entitled to be appointed Personal Representative;
- (2) That the decedent died having left a valid will or intestate, and
- (3) The petition and other evidence before the court are sufficient to support the jurisdiction of the court, the court shall enter an order initiating probate of the decedent's estate. Such order shall either establish and initiate probate of decedent's will or shall conclude that the decedent died intestate and identify the decedent's heirs at law. Except in the event of a contest of a will pursuant to Chapter 10-6, such order shall be conclusive.

Absent such findings, the petition shall be dismissed.

(b) Following the conclusion of the hearing and order initiating probate the court shall issue Letters of Administration conferring the powers and duties of the Personal Representative on the petitioner or another person. The term "Letters of Administration" shall apply to the authority granted to a Personal Representative under this Title, regardless of whether decedent died testate or intestate.

**§10-4-6 Form of Letters of Administration**

Letters of Administration shall be signed by the court under the seal of the court, and shall be substantially in the following form:

Whereas (decedent) late of (address) on or about the \_\_ day of \_\_ A.D., \_\_died leaving at the time of his death, property in this jurisdiction subject to administration: Now, therefore, know all persons by these presents, that this court hereby appoints \_\_\_\_\_ administrator of said estate, and whereas said administrator has duly qualified, the court hereby authorizes him to administer the estate according to law.

Witness my hand and the seal of said court this \_\_ day of \_\_ 20\_\_.

**§10-4-7 Oath of Personal Representative**

Before Letters of Administration are issued, the appointed Personal Representative must take and subscribe an oath, before the clerk of the court or some other person authorized to administer oaths, that the duties and responsibilities as Personal Representative will be performed according to law. The oath must be filed with the court.

**§10-4-8 Notice of Appointment as Personal Representative, Pendency of Probate - Proof by Affidavit**

Within twenty days after appointment, the personal representative of the estate of a decedent shall cause written notice of his appointment and the pendency of said probate proceedings, to be served personally or by mail to each heir, legatee and devisee of the estate and each beneficiary or transferee of a nonprobate asset of the decedent whose names and addresses are known to him, and proof of such mailing or service shall be made by affidavit or declaration under penalty of perjury and filed with the court. Such notice shall include a copy of the court's order determining whether the decedent died testate or intestate.

**§10-4-9 Cancellation of Letters of Administration**

The court appointing any Personal Representative shall have authority for any cause deemed sufficient, to cancel and annul such letters and appoint other Personal Representatives in the place of those removed. If after letters of administration are granted, a will of the deceased is found and probate thereof be granted, the letters may be revoked or amended.

**§10-4-10 Successor Personal Representative**

If a personal representative of an estate dies or resigns or the letters are revoked before the settlement of the estate, successor Letters of Administration shall be granted to a person to whom the letters would have been granted if the original letters had not been obtained, and the successor personal representative shall perform like duties and incur like liabilities as the preceding personal representative, unless the decedent provided otherwise in a duly probated will or unless the court orders otherwise.

**§10-4-11 Inventory and Appraisal - Filing - Copy Distribution**

(a) Within ninety (90) days after appointment, unless a longer time shall be granted by the court, the personal representative shall make and verify by affidavit a true inventory and

appraisal of all of the property of the estate passing under the will or by laws of intestacy and which shall have come to the personal representative's possession or knowledge, including a statement of all encumbrances, liens, or other secured charges against any item. The personal representative shall determine the fair net value, as of the date of the decedent's death, of each item contained in the inventory after deducting the encumbrances, liens, and other secured charges on the item. Such property shall be classified as follows:

- (1) Real property, by legal description;
- (2) Stocks and bonds;
- (3) Mortgages, notes, and other written evidences of debt;
- (4) Bank accounts and money;
- (5) Furniture and household goods;
- (6) All other personal property accurately identified, including the decedent's nonprobate assets, and proportionate share in any partnership, but no inventory of the partnership property shall be required of the personal representative.

(b) The inventory and appraisal shall be filed with the tribal court and notice of its filing shall be served on any heir, legatee, devisee, unpaid creditor who has filed a claim, or beneficiary of a nonprobate asset.

(c) The personal representative shall have the duty to amend the inventory and appraisal within 30 days of acquiring knowledge of any additional property of the estate. Notice of the amendment shall be served as notice of the original inventory was served.

(d) Within fifteen (15) days of the end of the period set forth above, one or more of the interested parties may file an objection with the Court and request a hearing. A hearing may be held at the Court's discretion.

#### **§10-4-12 Summary Probate of Exempt Estates**

(a) Exempt Estates. An estate having an appraised value which does not exceed \$25,000 and which is to be inherited, through the rules of intestacy or by devise, by a surviving spouse and/or minor children of the deceased shall be exempt from the claims of all general creditors and the probate thereof may be summarily concluded as provided in this section. Reasonable funeral expenses shall not be subject to this exemption.

(b) Notice of Hearing to Determine Whether the Estate is an Exempt Estate. Upon petition of the Personal Representative, the Court shall enter an order stating that it appears, from the inventory and appraisal filed with the Court, that the appraised value of the whole estate does not exceed \$25,000 and that such estate is to be inherited by the surviving spouse and/or minor children of the decedent and shall set a date and hour for hearing objections of any interested persons, if any, why the whole estate should not be declared to be exempt from the claims of all general creditors and distributed to the surviving spouse and/or minor children of the decedent. Notice of such hearing shall be given by posting a true copy of such order in the offices of the Nez Perce Tribal Executive Committee, and by sending a true copy of such order by certified

mail to all persons known to the Personal Representative to be an heir, devisee or legatee of the decedent. Such notice shall be posted or mailed not less than ten days before the time set for such hearing. On or before the time set for such hearing, the Personal Representative shall file his affidavit with the Court indicating compliance with this requirement of giving notice.

(c) Hearing to Determine Whether the Estate is an Exempt Estate. If, upon such hearing, the Court finds that such estate is an exempt estate, the Court shall enter an order directing the Personal Representative to pay any reasonable funeral expenses as determined by the Court, to distribute such estate to the surviving spouse and/or the minor children of the deceased as set forth in the order and provide that no further proceedings are necessary and that, upon distributing the distributive share or shares of such estate to those entitled to them and filing receipts with the court, the estate shall be closed, and the Personal Representative discharged.

#### **§10-4-13 Interim Reports of Personal Representative**

(a) The personal representative shall make, verify by his oath, and file with the clerk of the court reports of the affairs of the estate at least annually, and more frequently if necessary or required by the court. Such report shall contain:

- (1) a statement of the claims against the estate filed and allowed and all those rejected;
- (2) a statement whether it is necessary to sell, mortgage, lease or exchange any property for the purpose of paying debts or settling any obligations against the estate or expenses of administration or allowance to the family. Such report shall set out the facts showing such necessity and ask for such sale, mortgage, lease or exchange;
- (3) a statement of the amount of property, real and personal, which has come into his hands, and give a detailed statement of all sums collected by him, and of all sums paid out, and it shall state such other things and matters as may be proper or necessary to give the court full information regarding any transactions by him done or which should be done.

(b) The personal representative will shall provide notice, in person or by mail, to all heirs at law, legatees, devisees, and claimants against the estate of the filing of the report.

(c) Within fifteen (15) days of the end of the period set forth above, one or more of the interested parties may file an objection with the Court and request a hearing. A hearing may be held at the Court's discretion.

#### **§10-4-14 Final Report of the Personal Representative - Petition for Decree of Distribution**

(a) Upon the filing of a full and complete inventory, payment of all claims, and upon conclusion of any contested matter, or upon order of the Court, the personal representative shall make, verify and file with the court his final report and petition for distribution. Such final report and petition shall, among other things, show:

- (1) that the estate is ready to be settled and any moneys collected since the

previous report; and

- (2) any property which may have come into the hands of the personal representative since his previous report; and
- (3) debts paid; and
- (4) generally, the condition of the estate at that time; and
- (5) the names and addresses, as nearly as may be, of all the legatees and devisees in the event there shall have been a will; and
- (6) the names and addresses, as nearly as may be, of all the heirs who may be entitled to share in such estate; and
- (7) a particular description of all the property of the estate remaining undisposed of.

(b) Other matters as may tend to inform the court of the condition of the estate, and it may ask the court for a settlement of the estate and distribution of property and the discharge of the personal representative.

(c) If the personal representative has been discharged without having legally closed the estate, without having legally obtained an adjudication as to the heirs, or without having legally procured a decree of distribution or final settlement, the court may in its discretion upon petition of any person interested, cause all such steps to be taken in such estate as were omitted or defective.

#### **§10-4-15 Time and Place of Hearing on Final Report and Petition for Distribution – Notice**

When such final report and petition for distribution has been filed, the court shall fix a day for hearing which must be at least thirty (30) days after the report was filed. The personal representative shall, not less than twenty (20) days before the hearing, mail a copy of the notice of the time and place fixed for hearing to each heir, legatee, devisee and distributee whose name and address are known to him, and proof of such mailing shall be made by affidavit and filed at or before the hearing.

#### **§10-4-16 Hearing on Final Report and Petition for Distribution - Decree of Distribution**

Any person interested may file objections to the final report and petition for distribution or may appear at the hearing and present his objections thereto. The court may take such testimony it deems proper or necessary to determine whether the estate is ready to be settled, and whether the transactions of the personal representative should be approved, and to determine who are the legatees or heirs or persons entitled to have the property distributed to them. The court shall, if it approves such report, and finds the estate ready to be closed, enter a decree approving such report, find and adjudge the persons entitled to the remainder of the estate, and that all debts have been paid, and by such decree shall distribute the real and personal property to those entitled to it. Upon the production of receipts from the beneficiaries or distributees for their portions of the estate, the court shall, if satisfied with the correctness thereof, adjudge the

estate closed and discharge the personal representative.

The court may, upon such final hearing, partition among the persons entitled thereto, the estate held in common and undivided, and designate and distribute their respective shares; or assign the whole or any part of said estate to one or more of the persons entitled to share therein. The person or persons to whom said estate is assigned shall pay or secure to the other parties interested in said estate their just proportion of the value thereof as determined by the court from the appraisal, or from any other evidence which the court may require.

If it shall appear to the court at or prior to any final hearing that the estate cannot be fairly divided, then the whole or any part of said estate may be sold or mortgaged by the personal representative and the proceeds thereof distributed to the persons entitled thereto as provided in the final decree.

The court shall have the authority to make partition, distribution and settlement of all estates in any manner which to the court seems right and proper, to the end that such estates may be administered and distributed to the persons entitled thereto. No estate shall be partitioned, nor sold where partition is impracticable, except upon a hearing before the court. The court shall fix the values of the several pieces or parcels to be partitioned at the time of making such order of partition or sale, and may order the property sold and the proceeds distributed, or may order partition and distribute the several pieces or parcels, subject to such charges or burdens as shall be proper and equitable.

#### **§10-4-17 Distributions to Minors**

When a decree of distribution orders distribution of an estate or interest therein to a person under the age of eighteen years, it shall be required that:

(a) The money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the minor subject to withdrawal only upon the order of the court in the original probate proceeding, or upon said minor's attaining the age of eighteen years and furnishing proof thereof satisfactory to the depository; or

(b) A general guardian shall be appointed, and the money or property be paid or delivered to such guardian prior to the discharge of the personal representative in the original probate proceeding.

#### **§10-4-18 Letters After Final Settlement**

A final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or if it should become necessary and proper from any cause that letters should be again issued.

#### **§10-4-19 Receipts for Expenses from Personal Representative**

The personal representative shall produce receipts or canceled checks for the expenses and charges which he shall have paid, which receipts shall be filed and remain in court until the probate has been completed and the personal representative has been discharged; however, he may be allowed any item of expenditure, not exceeding fifty (50) dollars, for which no receipt is produced, if such item be supported by his own oath, but such allowances without receipts shall not exceed the sum of five hundred (500) dollars in any one estate.

**CHAPTER 10-5 CLAIMS AGAINST ESTATE****§10-5-1 Notice to Creditors**

The personal representative shall give notice to the creditors of the decedent, announcing the personal representative's appointment and requiring that persons having claims against the decedent present their claims within sixty (60) days from the notice or be forever barred as to claims against the decedent's probate and nonprobate assets. The personal representative shall file with the court proof by affidavit of the giving and publication of the notice.

- (a) The personal representative shall first file the original of the notice with the court;
- (b) The personal representative shall then cause the notice to be published once each week for three successive weeks in a newspaper of general distribution published at least weekly serving the Nez Perce Reservation.

**§10-5-2 Form of Notice**

Notice under notice to creditors § 10-5-1 must contain the following elements in substantially the following form:

The personal representative named below has been appointed as personal representative of this estate. Any person having a claim against the decedent must present the claim in the manner as provided in this Chapter by serving on or mailing to the personal representative or the personal representative's attorney at the address stated below a copy of the claim and filing the original of the claim with the court. The claim must be presented within sixty days after the date of first publication of the notice as provided § 10-5-4. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in § 10-5-3. This bar is effective as to claims against both the decedent's probate and nonprobate assets.

Date of First Publication:

Personal Representative:

Attorney for the Personal Representative:

Address for Mailing or Service:

**§10-5-3 Claims Barred**

(a) All claims against the decedent or his estate are barred unless presented within sixty days of the first publication of the notice required by §10-5-1 or receipt of actual notice of decedent's death, whichever is sooner, except that the time limitations for presenting claims under this chapter do not accrue to the benefit of any liability or casualty insurer.

(b) Claims against the decedent or the decedent's marital community that can be fully satisfied by applicable insurance coverage or proceeds need not be presented within sixty days of the date of first publication of the notice to creditors, but the amount of recovery on any claim not so presented cannot exceed the amount of the insurance.

(c) The claims may at any time be presented, subject to the otherwise relevant statutes of limitations, and do not constitute a cloud, lien, or encumbrance upon the title to the decedent's probate or nonprobate assets nor delay or prevent the conclusion of probate proceedings or the transfer or distribution of assets of the estate.



(d) This section does not serve to extend any otherwise relevant statutes of limitations.

#### **§10-5-4 Claims - Form - Manner of Presentation**

(a) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

- (1) The name and address of the claimant;
- (2) The name, address, if different from that of the claimant, and nature of authority of an agent signing the claim on behalf of the claimant;
- (3) A statement of the facts or circumstances constituting the basis of the claim, attaching any documents evidencing the claim;
- (4) The amount of the claim; and
- (5) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.

(b) A claim does not need to be supported by affidavit.

(c) A claim must be presented within sixty days of the date of first publication of the notice required by § 10-5-1 by:

- (1) Serving on or mailing to, by regular first class mail, the personal representative or the personal representative's attorney a copy of the signed claim; and
- (2) filing the original of the signed claim with the court.
- (3) A claim is deemed presented upon the later of the date of postmark or service on the personal representative, or the personal representative's attorney, and filing with the court.

#### **§10-5-5 Allowance or Rejection of Claims**

The personal representative shall allow or reject all claims timely presented. The personal representative may allow or reject a claim in whole or in part. If the personal representative fails to notify the claimant of the allowance or rejection of the claim within thirty days after the personal representative's receipt of the claimant's notice, the claimant may petition the court for a hearing to determine whether the claim should be allowed or rejected, in whole or in part.

#### **§10-5-6 Allowance of Claims – Notice**

If the personal representative allows a claim, the personal representative shall notify the claimant of the allowance by personal service or regular first class mail to the address stated on the claim. Allowed claims must be ranked among the acknowledged debts of the estate to be paid expeditiously in the course of administration.

**§10-5-7 Rejection of Claims - Notice – Remedy**

(a) If the personal representative rejects a claim, in whole or in part, the claimant must bring a petition for allowance of the claim in the probate action within thirty days after notification of rejection or the claim is forever barred. The personal representative shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The personal representative shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or the claimant's agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must advise the claimant that the claimant must bring a petition for allowance of the claim in the probate action within thirty days after notification of rejection or the claim will be forever barred.

(b) The personal representative may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated, or unliquidated, if it appears to the personal representative that the compromise is in the best interests of the estate.

**§10-5-8 Judgment Against Decedent - Execution Barred Upon Decedent's Death – Presentation**

If a judgment was entered against the decedent during the decedent's lifetime, an execution may not issue on the judgment after the death of the decedent. The judgment must be presented as a creditor's claim as provided §10-5-4.

**§10-5-9 Secured Claim - Creditor's Right**

If a creditor's claim is secured by any property of the decedent, this chapter does not affect the right of a creditor to realize on the creditor's security, whether or not the creditor presented the claim in the manner provided in §10-5-4.

**§10-5-10 Order of Payment of Debts**

(a) After payment of costs of administration, the debts of the estate shall be paid in the following order:

- (1) Funeral expenses in such amount as the court shall order, including a reasonable amount for the cost of a monument;
- (2) Expenses of the last illness, in such amount as the court shall order;
- (3) Wages due for labor performed within sixty (60) days immediately preceding the death of decedent;
- (4) Debts having preference by the laws of the United States; **[citations]**
- (5) Taxes, or any debts or fees owing to the Nez Perce Tribe;
- (6) Judgments rendered against the deceased in his lifetime which are liens upon real estate on which executions might have been issued at the time of his death, and debts secured by mortgages in the order of their priority;

and

- (7) All other approved claims against the estate.

## **CHAPTER 10-6 WILL CONTESTS**

### **§10-6-1 Contest of Probate or Rejection - Limitation of Action - Issues**

Any person interested in any will who wishes to contest the validity of or rejecting of the will as per §10-4-5, shall petition the tribal court within thirty (30) days immediately following the notice of approval or rejection of the will. The petition shall contain his objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

If no person shall appear within the time under this section, the approval for probate or rejection of such will shall be binding and final.

### **§10-6-2 Notice of Contest**

Upon the filing of the petition referred to in §10-6-1, a notice shall be issued to the personal representative of the decedent's estate, and to all heirs at law, legatees named in the will or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court, on a day therein specified, to show cause why the petition should not be granted.

### **§10-6-3 Burden of Proof**

In any such contest proceedings, the previous order of the court probating, or refusing to probate a will, or finding that the decedent dies intestate, shall be sufficient evidence of the findings and conclusions contained in the court's order. The burden of proof shall rest upon the person contesting the court's previous order. The court's previous order shall stand unless the person contesting it provides clear and convincing evidence to the contrary.

### **§10-6-4 Orders Following Hearing on Contest**

If a petitioner proves with clear and convincing evidence that the previous order of the court accepting or rejecting a will, in whole or in part, or a finding that the decedent died intestate was in error, the court shall issue a new order reflecting the evidentiary findings made following the contest proceedings. The new order may accept or reject a will, in whole or in part, may find that the decedent dies intestate, and may amend the letters of appointment of the Personal Representative for the estate.

### **§10-6-5 Costs**

In any contest proceeding, assessment of costs shall be in the discretion of the court. If the contestant is not successful, the court may assess the costs against the contestant, including, unless it appears that the contestant acted with probable cause and in good faith, such reasonable attorney's fees as the court may deem proper.

**CHAPTER 10-7 FAMILY SUPPORT PENDING PROBATE****§10-7-1 Support of Surviving Spouse and Children Pending Probate**

During the pendency of a probate proceeding, the surviving spouse of a decedent may petition the court for an award from the property of the decedent to provide basic maintenance and support. If the decedent is survived by minor or dependent children of the decedent who are not also the children of the surviving spouse, on petition of such a minor or dependent child the court may divide the award between the surviving spouse and all or any of such minor or dependent children as it deems appropriate. If there is not a surviving spouse, the minor or dependent children of the decedent may petition for an award.

**§10-7-2 Award Discretionary**

Any award made and the amount of such award to the surviving spouse and decedent's minor or dependent children is in the court's discretion. The court may consider, in addition to any other relevant factors:

- (a) the claimant's present and reasonably anticipated future needs during the pendency of any probate proceedings in tribal court with respect to basic maintenance and support;
- (b) the resources available to the claimant and the claimant's dependents, and the resources reasonably expected to be available to the claimant and the claimant's dependents during the pendency of the probate, including income related to present or future employment and benefits flowing from the decedent's probate and nonprobate estate;
- (c) the intentions of the decedent, as reflected in the provisions made for the claimant by the decedent under the terms of the decedent's will or otherwise, as well as provisions made for third parties or other entities under the decedent's will or otherwise that would be affected by an award;
- (d) If the claimant is the surviving spouse, the duration and status of the marriage of the decedent to the claimant at the time of the decedent's death;
- (e) The effect of any award on the availability of any other resources or benefits to the claimant;
- (f) The size and nature of the decedent's estate; and
- (g) Oral or written statements made by the decedent that are otherwise admissible as evidence.

**§10-7-3 Priority of Award**

The award has priority over all other claims made in the estate. In determining which assets must be made available to satisfy the award, the claimant is to be treated as a general creditor of the estate, and unless otherwise ordered by the court the assets shall abate in satisfaction of the award in accordance with the § 10-8-7.

**§10-7-4 Immunity of Award from Debts and Claims of Creditors**

(a) If any property awarded under this chapter is being purchased on contract or is subject to any encumbrance, it will continue to be subject to any such contract or encumbrance. All other property awarded, and cash paid under this chapter is immune from all debts, including judgments and judgment liens, of the decedent and of the surviving spouse existing at the time of death.

(b) Both the decedent's and the surviving spouse's interests in any community property awarded to the spouse under this chapter are immune from the claims of creditors.

**§10-7-5 Exhaustion of Estate - Closure of Estate - Discharge of Personal Representative**

If an award provided by this chapter will exhaust the estate, the court in the order of award or allowance shall order the estate closed, discharge the personal representative, and exonerate the personal representative's bond, if any.

**CHAPTER 10-8 UNIFORM SIMULTANEOUS DEATH ACT****§10-8-1 Devolution of Property in Case of Simultaneous Death of Owners**

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.

**§10-8-2 Procedure when Beneficiaries Die Simultaneously**

Where two or more beneficiaries are designated to take successively or alternately 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 or alternate beneficiaries and the portion allocated to each beneficiary shall be distributed as if he had survived all the other beneficiaries.

**§10-8-3 Joint Tenants - Simultaneous Death**

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

**§10-8-4 Distribution of Insurance Policy when Insured and Beneficiary Die Simultaneously**

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.

**§10-8-5 Scope of Chapter Limited**

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.

**§10-8-6 Construction of Chapter**

This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those jurisdictions which enact it.

**§10-8-7 Abatement Generally**

(a) Except as provided in subsection (b) of this section, property of a decedent abates, without preference as between real and personal property, in the following order:

- (1) Intestate property;
- (2) Residuary gifts;
- (3) General gifts;
- (4) Specific gifts.

(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1) of this section, a gift abates as may be found necessary to give effect to the intention of the testator. The personal representative may petition the court for an order requiring adjustments in, or contributions from, interests in the estate assets as necessary to give effect to the intent of the testator.

**CHAPTER 10-9 INHERITANCE RIGHTS OF SLAYER****§10-9-1 Slayer Defined**

For purposes of this chapter "slayer" shall mean any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful killing of any other person.

**§10-9-2 Slayer Not to Benefit from Death**

No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent. The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or under any agreement made with the decedent, or as to any property which would have passed to or for the benefit of the slayer by devise or legacy from the decedent.

**§10-9-3 Insurance Proceeds**

Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid instead to the estate of the decedent, unless the policy or certificate designate some person other than the slayer or his estate as secondary beneficiary to him and in which case such

proceeds shall be paid to such secondary beneficiary in accordance with the applicable terms of the policy.

**§10-9-4 Payment by Insurance Company, Bank, etc. - No Additional Liability**

Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer shall not be subjected to additional liability by the terms of this chapter if such payment or performance is made without written notice, at its office or at an individual's home or business address, of the killing by a slayer.

**§10-9-5 Rights of Persons Without Notice Dealing with Slayer**

The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, purchases or has agreed to purchase, from the slayer for value and 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 both 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.

**§10-9-6 Record of Conviction as Evidence Against Claimant of Property**

The record of his conviction of having participated in the willful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this chapter.

**§10-9-7 Chapter to be Construed Broadly**

This chapter shall be construed broadly to affect the policy of this Tribe that no person shall be allowed to profit by his own wrong