

HEIRSHIP AND PROBATE

Amendment
 New Adoption
Judicial Approved

Council Adopted

44-01-01 JURISDICTION

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

44-02-01 DETERMINATION OF HEIRS

When any member of the Tribe dies leaving property subject to the jurisdiction of the Court, any person claiming to be an heir of the decedent, may file a petition in the Court for a determination of the heirs of the decedent and for the distribution of such property. Non-Indians interested in the outcome of any Tribal probate proceeding must consent of the jurisdiction of the Tribal Court.

44-02-02 Public Notice of Hearing

Promptly after the petition is filed, the Clerk of Court shall give notice of the time and place of hearing to determine the heirs of the deceased Indian, and calling on all persons interested to attend the hearing, by posting a copy of the notice for at least twenty (20) days prior to the date of hearing in three or more conspicuous places in the vicinity of the place of hearing.

44-02-03 Service of Notice on Interested Parties

A copy of the notice of hearing shall be served at least ten (10) days before the date of hearing, either personally, by first class mail, by certified mail, or by registered mail, on each claimant or presumptive heir and on the Tribe. Service on the Tribe shall be made by delivering a copy of the notice to the Chairman and a copy to the Secretary of the Tribal Council.

44-02-04 Proof of Service of Notice of Hearing

Proof of service of the notice of hearing required in Section 44-02-03 above shall be filed in each case. Proof of service shall consist of one of the following:

1. Acknowledgement of receipt of service by the endorsement of the person served on a copy of the notice of hearing;

2. A certification that service was made either in person or by first class mail, signed by an adult person making service; or
3. The return receipt where service was made by certified or registered mail.

44-03-01 APPLICABLE LAW

The Court is empowered:

1. To appoint a temporary custodian or administrator to supervise and protect the assets of the estate.
2. To take all action, including the sale of the property at appraised value, necessary and appropriate to protect or conserve the property or to satisfy claims, before distribution to the heirs.
3. To require bond from the custodian or administrator for the fulfillment of his duties.

44-04-01 CLAIMS

The Court shall allow claims of the Tribe against the estate of the decedent, including claims for expenses of the last sickness and funeral expenses incurred by the Tribe or an individual.

44-05-01 DISTRIBUTION

The Court shall distribute all property of the decedent, over which the Court has jurisdiction.

44-06-01 WILLS

When any member of the Tribe dies, leaving a will disposing of property subject to the jurisdiction of the Court; the Court, at the request of any Indian named in the will or any other interested party, shall determine the validity of the will, after giving notice, as provided in Section 44-02-02 herein. A will shall be deemed valid if it was made in writing and signed by the decedent in the presence of two (2) witnesses who, then and there, signed the will as witnesses, and if, at the time the decedent made the will, the decedent was of sound and sane mind, and understood what he was doing and was not subject to undue influence or duress of any kind from another person. If the Court determines the will to be valid, it shall distribute the property in accordance with the will.

- 44-06-02** If the will is determined to be invalid, the Court shall determine the heirs as if the decedent had died without a will, and shall distribute the property accordingly.

44-07-01 FEES

The Court shall fix probate fees in a sum not less than ten dollars (\$10.00), and not more than a sum equal to ten percent (10%) of the appraised value of the estate.

14-08-01 SEVERABILITY

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.

S.W.S.T. CODE

Amendment

New Adoption

Judicial Approved

22-24-88

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