

Title 8 PROBATE CODE

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Chapter 8.01 GENERAL

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8.01.010 Title.

This title shall be known as the Probate Code.

(Res. No. 10-24A, 1-1-10)

8.01.020 Legislative findings and purposes.

A. The Tribal Council makes the following findings:

1. The Tribal government has inherent authority to govern matters relating to probate as central to the Tribe's health, welfare, economic security, culture and existence as an independent political community; and

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2. Establishing a simple and flexible probate procedure in Tribal Court is the most economical and expeditious way to resolve probate matters and is in the best interest of Squaxin Island Tribal members.
- B. The purposes of this Probate Code are:
1. To ensure that the property of decedents passes to the rightful heirs or beneficiaries;
 2. To encourage members to plan for the transfer of property upon their deaths by making wills;
 3. To comply with the decedents' wishes as much as possible;
 4. To comply with Tribal custom and tradition and the wishes of decedents' loved ones to fill gaps when decedents' wishes are unclear;
 5. To provide a simple, flexible, efficient and inexpensive method for probating decedents' property;
 6. To prevent the transfer of residences on Tribal trust land out of Tribal ownership and control;
 7. To protect, when possible and fair, the rights of creditors of decedents;
 8. To continue the Tribe's self-governance by, among other things, providing a way to probate estates in Tribal Court; and
 9. To guide the Tribal Court on probate matters and, when necessary, provide Tribal law for state and federal courts to apply when probating the property of Tribal members.

(Res. No. 10-24A, 1-1-10)

8.01.030 Jurisdiction.

- A. The Tribal Court shall have all necessary jurisdiction to administer in probate the estate of a decedent who, at the time of their death, was domiciled or owned real or personal property situated within the Reservation, to the extent that such estate consists of property which does not come within the exclusive jurisdiction of the U.S. Department of the Interior.
- B. A decedent Tribal member is presumed to be domiciled within the Reservation regardless of residence elsewhere, if there is no proof of domicile elsewhere.
- C. The Tribal Court shall have the broadest possible authority to execute its duties and responsibilities under this code.

(Res. No. 10-24A, 1-1-10)

8.01.040 Interpretation.

- A. This code shall be liberally construed in a manner that is consistent with the findings and purposes in Section 8.01.020.
- B. The law of the state of Washington relative to decedents' estates may be referred to and followed in situations where this Probate Code provides no guidance, but only so far as such law is not inconsistent with the provisions and spirit of this Probate Code.

(Res. No. 10-24A, 1-1-10)

8.01.050 Definitions.

The following terms when used in this code shall have the following meanings:

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"Child" or "children" means sons and daughters of an individual, including a child that whose adoption was recognized by a court with competent jurisdiction. Therefore, stepchildren and foster children and their descendants do not inherit, unless adopted or specified in a will.

"Code" means this Title 8, Probate Code.

"Decedent" means a deceased individual.

"Descendent" means people who are of the bloodline of an ancestor.

"Devise" means disposing of real or personal property by will.

"Devisee" means a person named in a will to inherit property.

"Estate" means the assets and debts left by a decedent.

"Heir" means a person who is entitled to inherit the property of a decedent who dies without a will.

"Member" means a person enrolled in the Squaxin Island Tribe.

"Incapacitated" means an adult or minor person of whom a protective order has been issued.

"Indian" means an enrolled member of a federally-recognized Indian tribe.

"Minor" means a person under the age of eighteen (18) years.

"Parent" means and includes a biological or adoptive parent but does not include persons whose parental rights have been terminated, nor does it include an unwed father whose paternity has not been acknowledged or established. (Youth Code, Section 10.04.040).

"Person" means an individual having certain legal rights and responsibilities.

"Personal property" means temporary or movable property, property other than real property.

"Probate" means the Tribal Court process that allows collecting a decedent's property, paying decedent's bills and taxes owed, and distributing decedent's property to his or her heirs and/or devisees.

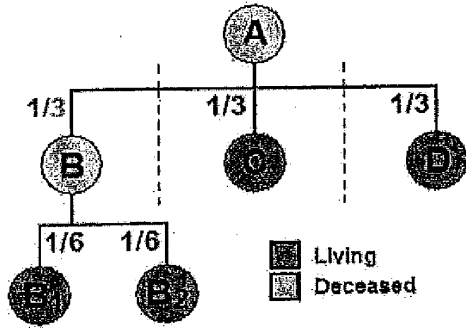
"Property" means both real and person property, unless otherwise specified.

"Real property" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

"Reservation" means the Squaxin Island Reservation as now or hereafter established.

"Residuary," "residual estate" or "residue" means any part of an estate that a valid will does not specifically devise to a person, or any property that is part of specific devise that fails for whatever reason. Many wills identify the person who takes the residuary estate through a residuary clause but, if the will lacks such a clause, then the residuary estate shall pass under the rules that apply if there was no will.

"Right of representation" means a way of dividing property so that each branch of the family receives an equal share of an estate. If an heir in the first generation of a branch dies before the decedent, then the share that would have gone to that heir is distributed among the heir's children in equal shares. Here is an example:



Decedent A's estate is divided equally between each of the three branches. B, C and D each receive one third. Since B died before A, B's two children - B1 and B2 - each receive one half of B's share in the amount of one-sixth of A's estate.

"Spouse" means individuals married to, or registered as a domestic partnership with, the decedent and common law spouses, the latter of which means parties to a marriage that is recognized under Tribal custom or parties to a relationship wherein the couple reside together and intend to reside together as a family. "Surviving spouse" or "surviving domestic partner" does not include an individual whose marriage to or state registered domestic partnership with the decedent has been terminated, dissolved, or invalidated unless, by virtue of a subsequent marriage or state registered domestic partnership, he or she is married to or in a domestic partnership with the decedent at the time of death. A decree of separation that does not terminate the status of spouses or domestic partners is not a dissolution or invalidation for purposes of this subsection.

"Tribe" or "Tribal" means the Squaxin Island Tribe.

"Tribal Court" means the Squaxin Island Trial Court.

"Tribal Member" or "Member" means a person enrolled in the Squaxin Island Tribe.

"Will" means document that says who will inherit property and that meets the requirements of Chapter 8.05 of this code.

(Res. No. 10-24A, 1-1-10)

8.01.060 Prior ordinances and resolutions.

This code supersedes and replaces any resolutions or ordinances, or portions thereof, that conflict with this code.

(Res. No. 10-24A, 1-1-10)

8.01.070 Severability.

If any portion of this code is ruled invalid by a court of competent jurisdiction, that portion shall no longer be operative but the rest of this code shall continue in full force and effect.

(Res. No. 10-24A, 1-1-10)

8.01.080 Sovereign immunity.

Nothing in this code shall be construed as a waiver of the sovereign immunity of the Tribe, or of its enterprises, agents, employees or officials.

(Res. No. 10-24A, 1-1-10)

8.01.090 Effective date.

This code shall become effective on January 28, 2010.

(Res. No. 10-24A, 1-1-10)

Chapter 8.02 RULES FOR SPECIFIC PROPERTY

Sections:

[8.02.010 Residences located on real property held in trust for the Tribe.](#)

[8.02.020 Indian artifacts and finery.](#)

8.02.010 Residences located on real property held in trust for the Tribe.

- A. Notwithstanding any section of this code, Section 11.20.490 of the Squaxin Island Tribal Housing Code shall govern the inheritance of residences located on Tribal trust property. Since the Housing Code grants only members the right to lease, to hold a leasehold interest, or to own a residence, any attempt by a decedent member to leave his or her legal interest in the residence to another individual shall be recognized only to the following extent:
1. Completely, if the decedent member leaves his or her legal interest in the residence to another member by will.
 2. If the decedent member leaves his or her legal interest in the residence to a non-member spouse by will, then only to the extent that the non-member spouse can reside in the residence for the rest of his or her life, must maintain and occupy the residence as his or her primary residence, and must comply with all Tribal Housing Program policies and procedures.
 3. If the member who dies leaves his or her legal interest in the residence to a non-member descendant by will, then only to the extent that such non-member descendant has the right to reside in the residence for the duration of his or her life, must maintain and occupy the residence as his or her primary residence, and must comply with all Tribal Housing Program policies and procedures. Additionally, a member must own or lease the residence as his or her primary residence to such non-member descendant.
- B. Any attempt by a non-member spouse, non-member descendant, non-member Indian, or a member or non-member minor or incapacitated person to leave the residence by will shall only be recognized if the conveyance or transfer is to a member.

(Res. No. 10-24A, 1-1-10)

8.02.020 Indian artifacts and finery.

- A. If the decedent's will did not address how to dispose of his or her Indian artifacts and finery, then this section shall control.
1. Every attempt shall be made to follow the Tribe's customs and traditions.
 2. Disposing of the Indian artifacts and finery shall be at the direction of the surviving spouse; if there is none, then at the direction of the decedent's eldest surviving sibling; if there is none; then at the direction of the decedent's parents; if there is/are none, then at the direction of the eldest surviving child; if there is none, then at the direction of the Tribal Court.
 3. An interested person may contest distribution of Indian artifacts and finery by initiating informal resolution procedure.

(Res. No. 10-24A, 1-1-10)

Chapter 8.03 DISTRIBUTING PROPERTY THAT IS NOT COVERED BY A VALID WILL

Sections:

[8.03.010 Intestate succession.](#)

[8.03.020 General rules for intestate succession.](#)

[8.03.030 Small estates.](#)

[8.03.040 Effect of feloniously taking life of another.](#)

8.03.010 Intestate succession.

Any part of a decedent's property that is not disposed of by the decedent's will, including if all or part of the will is invalid, shall pass to the decedent's heirs as described in this chapter.

(Res. No. 10-24A, 1-1-10)

8.03.020 General rules for intestate succession.

- A. The following persons will inherit a decedent's interests, provided that each such person is eligible for inheritance under this code:
1. To the surviving spouse, one-half of the interest; the other one-half in equal shares to the child or children of any deceased child by right of representation;
 2. If there is no surviving spouse, the interest will devise in equal shares to the children of the decedent;
 3. If there are no surviving children or children of a deceased child, the entire interest will descend to the surviving spouse;
 4. If there are no surviving spouse and no surviving children, or children of a deceased child, the interest will descend in equal shares to the surviving parent of the decedent;
 5. If there are no surviving spouse, children, children of a deceased child or parents the interest will devise in equal shares to siblings, subject to the restrictions on inheritance provided in this code and the Housing Code;
 6. If there are no surviving spouse, children, children of a deceased child, parent, or siblings, the interest will be divided into as many shares as there are surviving heirs in the nearest degree of kinship;
 7. If there are no surviving heirs of decedent the estate shall go to the Tribe.
- B. For the purpose of inheritance to, through, and from any child, the effects and treatment of the parent-child relationship shall not depend upon whether or not the parents have been married.
- C. In all cases, heirs' interests are subject to the other provisions of this code, including but not limited to Section 8.02.010 (Residences located on real property held in trust for the Tribe).

(Res. No. 10-24A, 1-1-10)

8.03.030 Small estates.

- A. The property of a decedent who dies without a will, where the total property value is no more than five thousand dollars (\$5,000.00), shall be distributed as follows:
1. If there is a surviving spouse, then the entire estate goes to the surviving spouse;
 2. If there is no surviving spouse, then the entire estate goes to the deceased's surviving children, equally divided; and
 3. If there is no surviving spouse and no surviving children, then the estate shall be distributed as described in Section 8.03.020 (General rules for intestate succession).
- B. Any person claiming a legal interest in the decedent's estate may request a hearing from the Tribal Court on ten (10) days notice.

(Res. No. 10-24A, 1-1-10)

8.03.040 Effect of feloniously taking life of another.

No person who, with felonious intent, takes or assists the taking of the life of a decedent may inherit any property or receive any benefit, including life insurance proceeds, from the estate of a decedent.

(Res. No. 10-24A, 1-1-10)

Chapter 8.04 FAMILY RIGHTS AND PROTECTION

Sections:

[8.04.10 Support for dependents—Generally.](#)

[8.04.020 Omitted spouse.](#)

[8.04.030 Omitted children.](#)

[8.04.040 Homestead allowance.](#)

[8.04.050 Exempt property.](#)

[8.04.060 Support for dependants residences located on real property held in trust for the Tribe.](#)

[8.04.070 Dwelling exemption.](#)

8.04.10 Support for dependents—Generally.

The Tribal Court has authority to, at any time, enter appropriate orders to assist those who depended upon the decedent for financial support, as long as the Tribal Court does not harm the rights of those entitled to take under a will.

(Res. No. 10-24A, 1-1-10)

8.04.020 Omitted spouse.

If the deceased had made a will, and later married, but did not change the will to provide for the surviving spouse, then the omitted spouse shall receive a share of the estate equal in value to that which he would have received if the decedent had died without a will (i.e., under the rules in Section 8.03.020) unless:

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- A. It appears from the will that the omission was intentional; or
- B. The decedent provided for the spouse by transfer of property outside the will, and evidence supports that such transfer was in lieu of a will provision.

(Res. No. 10-24A, 1-1-10)

8.04.030 Omitted children.

If a decedent made a will, and later adopted or had biological children but did not change the will to provide for any of these children, then each omitted child shall receive a share of the estate equal in value to that which he would have received if the decedent had died without a will (i.e., under the rules in Section 8.03.020) unless:

- A. It appears from the will that the omission was intentional;
- B. When the decedent made the will, he or she had one or more children and devised most of his estate to the other parent of the omitted child;
- C. The decedent provided for the omitted child by transfer of property outside the will and evidence supports that such transfer was in lieu of a will provision; or
- D. When the decedent executed the will, he or she failed to provide for the child solely because he believed the child was dead.

(Res. No. 10-24A, 1-1-10)

8.04.040 Homestead allowance.

- A. A surviving spouse of a decedent who was domiciled on the Reservation is entitled to a homestead allowance of five thousand dollars (\$5,000.00). If there is no surviving spouse, then each child of the decedent is entitled to a homestead allowance amounting to five thousand dollars (\$5,000.00), equally divided by the number of children. The homestead allowance is:
 - 1. Exempt from and has priority over all claims against the estate;
 - 2. Has priority over exempt property (Section 8.04.050); and
 - 3. Is in addition to any share passing to the surviving spouse or child by the decedent's will, unless otherwise provided by the rules in Section 8.03.020.

(Res. No. 10-24A, 1-1-10)

8.04.050 Exempt property.

- A. In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled on the Reservation is entitled from the estate to a value not exceeding three thousand five hundred dollars (\$3,500.00) over and above any security interests therein in household furniture, automobiles, furnishings, appliances and personal effects.
- B. If there is no surviving spouse, children of the decedent are entitled jointly to the same value.
- C. Rights to exempt property:
 - 1. Have priority over all claims against the estate; and
 - 2. Are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will of the decedent.

(Res. No. 10-24A, 1-1-10)

8.04.060 Support for dependants residences located on real property held in trust for the Tribe.

- A. A devise purporting to convey an undivided interest in a residence located on tribal trust property to a non-member shall be deemed to convey a life estate, with the remainder to pass to the decedent's heirs according to the rules contained in Chapter 8.02 of this code, provided that, such devisee may disclaim his or her interest in such property to a specific person or persons who is an heir of decedent or co-owner of the subject trust property and is an enrolled member of the Squaxin Island Tribe.
- B. A non-member child of the decedent who inherits through intestate succession a residence owned by the decedent located tribal trust property and leased to the decedent shall inherit only a life estate as specified by Section 11.20.490 of the Squaxin Island Tribal Housing Code.

(Res. No. 10-24A, 1-1-10)

8.04.070 Dwelling exemption.

- A. This provision does not apply to residences covered by Section 8.02.010.
- B. The Tribal Court may set aside a home for the benefit of a surviving spouse and/or children as a homestead for up to a ten-year period if:
 - 1. Other heirs and/or creditors have a legal interest in the home; and
 - 2. The surviving spouse occupies the home, or the home is needed for the welfare and protection of such surviving spouse and/or children.
- C. If there is a special hardship or emergency, the Tribal Court may extend such term from year to year thereafter, provided that any heir(s) or creditors of the deceased may appear before the Court and protest the extension.
- D. The Court may also set aside such sums from the estate as the Court may deem necessary for maintenance and upkeep of the home.

Chapter 8.05 WILLS

Sections:

[8.05.010 Distribution under a will.](#)

[8.05.020 Wills.](#)

[8.05.030 Choice of law as to validity of will.](#)

[8.05.040 Interpreting wills.](#)

8.05.010 Distribution under a will.

The Tribal Court shall distribute the estate according to the terms of a decedent's valid will.

(Res. No. 10-24A, 1-1-10)

8.05.020 Wills.

- A. A will is valid and shall be enforced by the Tribal Court in probate proceedings if:

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1. The person making the will is at least eighteen (18) years old and competent;
2. The will is in writing;
3. The will is signed and acknowledged by the person making the will; and
4. At least two disinterested individuals who are at least eighteen (18) years old and competent witness the person's signing of his or her will, and each witness shall sign the will in the other's presence.

(Res. No. 10-24A, 1-1-10)

8.05.030 Choice of law as to validity of will.

- A. A will is valid if made in compliance with this Probate Code, or in compliance with the law of the place where the will was executed, or of the law of the place where the person was domiciled either when he or she executed the will or died.
- B. A will or any part of a will is revoked by:
 1. Another will that meets the requirements of subsection A; or
 2. By being burned, torn, cancelled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the person making the will or by another person in his presence and at his direction.
- C. If a person making a will is later divorced, the divorce shall revoke any disposition of trust property made by the will to the former spouse. The divorce also revokes any will provision conferring power of appointment upon the former spouse as executor, trustee, or guardian, unless the will specifically provides otherwise.
- D. If a will is lost or destroyed under circumstances such that the loss does not have the effect of revoking the will, the Tribal Court may take proof of the execution and validity of the will and establish it, notice to all persons interested having been first given. The provisions of a lost or destroyed will must be proved by clear and convincing evidence that, at minimum, includes testimony of a witness to either its contents or the authenticity of a copy of the will.

(Res. No. 10-24A, 1-1-10)

8.05.040 Interpreting wills.

- A. The intention of the person making the will, as expressed in the will, controls the legal effect of his or her decisions as to real and personal property.
- B. If a will is ambiguous, the following rules of construction apply as long as they do not conflict with the intent of the will:
 1. A will distributes all property that the decedent owned at his or her death, including property that he or she acquired after making the will.
 2. A recipient under a will who does not survive the decedent by one hundred twenty (120) hours is treated as if they had died before the decedent.
 - a. The property that should have gone to the recipient falls into the residue of the estate to be distributed, if the will has a "residuary clause" or something similar.
 - b. If the will lacks a residuary clause or something similar, then the property shall be distributed as described in Section 8.03.020.
 3. Property that the decedent gave during his or her lifetime to a person is not treated as satisfying a devise to that person.

(Res. No. 10-24A, 1-1-10)

Chapter 8.06 INFORMAL AND FORMAL PROBATE PROCEDURES

Sections:

[8.06.010 Informal probate procedure.](#)

[8.06.020 Informal resolution procedure.](#)

[8.06.030 Formal probate procedure.](#)

[8.06.040 Collection of decedent's personal property by affidavit.](#)

8.06.010 Informal probate procedure.

- A. Any person with a legal interest in the decedent's estate may request that the Tribal Court informally determine matters relating to probating the estate.
- B. Such person shall file with the Tribal Court a petition that is signed and verified by the applicant or his attorney, which shall describe:
 1. Why the Tribal Court has jurisdiction over the matter (see Section 8.01.030);
 2. The names, ages and addresses of the deceased's heirs and/or devisees;
 3. Whether or not the deceased died with a will and, if so, a copy of the will; and
 4. The share of decedent's estate that each heir or devisee should take.
- C. The Tribal Court may request additional information before issuing an order that approves or rejects the petition. Factors that the Tribal Court shall consider in making its decision include, but are not limited to, the complexity of factual or legal issues raised, whether it anticipates that the will is likely to be contested.
- D. Applicants have no right to appeal the Tribal Court's rejection of a petition for informal probate.
- E. If the Tribal Court deems the application appropriate for informal probate, it shall issue and serve upon each heir and/or devisee of the decedent, an order entitled, "Preliminary Order Granting Petition for Informal Probate and Determining Probate." The order shall, among other things:
 1. State the name of the decedent's estate, and the probate cause number;
 2. State the applicant's name and address;
 3. State that it is making an initial determination that the decedent died with or without a will, whichever the case may be;
 4. If the decedent died with a will, then the Tribal Court's order shall:
 - a. Include, for each devisee, an attached copy of the will;
 - b. List each devisee and, when appropriate, heir;
 - c. If possible, describe the share of decedent's estate that each devisee, and heirs when appropriate, appears entitled to take, including the distribution of any homestead allowance (Section 8.04.040), exempt property (Section 8.04.050), support for dependants residences located on real property held in trust for the Tribe (Section 8.04.060), and dwelling exemption (Section 8.04.070);
 - d. Describe where and when the notice described in Section 8.06.010(F) will be published; and

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- e. State that the order will become final within two months after the notice's last publication unless any devisee and/or heir contests the order in Tribal Court.
5. If the decedent died without a will, or the will appears to only address a portion of the decedent's estate, or the will appears invalid, then the Tribal Court order shall:
 - a. Include, for each devisee (even for an apparently invalid will), an attached copy of the will;
 - b. Describe why the will appears invalid or, as the case may be, why the will does not appear to devise all of the decedent's property;
 - c. List each heir and, when appropriate, devisee;
 - d. If possible, describe the share of decedent's estate that each heir, and devisee when appropriate, appears entitled to take including the distribution of any homestead allowance (Section 8.04.040), exempt property (Section 8.04.050), support for dependants residences located on real property held in trust for the Tribe (Section 8.04.060), and dwelling exemption (Section 8.04.070);
 - e. Describe where and when the notice described in Section 8.06.010(F) will be published; and
 - f. State that the order will become final within one month after the notice's last publication unless any devisee and/or heir contests the order in Tribal Court;
- F. Notice. Upon approval of the application for informal probate procedure, the applicant shall, within thirty (30) days, post notification to heirs and creditors of decedent's estate at minimum in the Klah Che Min and the Mason County Journal, and in additional places if the Tribal Court so requires. Notification shall remain posted for two months following the date of first posting. The applicant shall file with the Tribal Court proof of such publication. The notification shall contain:
 1. Decedent's full proper name and any aliases;
 2. The address of decedent's primary residence at the time of death;
 3. The date that the notification was first published;
 4. Notice to creditors and parties with a legal interest in the decedent's estate that they have one hundred twenty (120) days from the date of the first publication of the notice to object to the informal probate procedure and/or finalization of the initial order determining probate.
- G. Opportunity for Objection. If no person with a legal interest in the decedent's estate files with the Tribal Court an objection within 120 days of the last date of the notice's publication, the Tribal Court shall serve upon all persons listed in Section 8.06.101(B)(2) a "Final Order of Probate." At minimum, such order shall:
 1. Declare the decedent's will to be his or her last will and testament, list the persons entitled to receive his or her estate under the will and each person's share; and/or
 2. Declare that the decedent died without a valid will or that the will did not distribute the entirety of his or her estate, and list the persons entitled to receive his or her estate and each person's share.
- H. The right of an heir or devisee to inherit shall be subject to the prior rights of the decedent's creditors as described in Section 8.07.010.

(Res. No. 10-24A, 1-1-10)

8.06.020 Informal resolution procedure.

- A. If an heir, devisee, creditor or other person with a legal interest in decedent's estate objects to the preliminary order granting petition for informal probate and determining probate as described in Section 8.06.010 within one hundred twenty (120) days of the last date of the notice's publication,

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those persons may settle their disagreement according to the terms of subsection E of this section. Such agreement may be approved by the Tribal Court Judge if:

1. It is in writing and signed by all parties to the settlement;
 2. All parties to the settlement are aware of the material facts, and the effect of the settlement on their rights;
 3. It is in the best interest of the parties to settle rather than to litigate; and
 4. No heir or devisee's rights will be harmed by the settlement.
- B. If the Tribal Court finds that the written informal resolution agreement satisfies the requirements of subsection A, then it shall order distribution of the decedent's estate in compliance with the settlement agreement. A Court-approved settlement agreement is final and binding for all heirs, devisees and any other signing parties and cannot be appealed.
- C. An heir, devisee, creditor or other person with a legal interest in the decedent's estate may initiate this informal resolution procedure at any time within one hundred twenty (120) days after informal probate procedure is initiated. The petition shall include, at minimum:
1. The name of petitioner and petitioner's relation to decedent;
 2. A statement explaining why the petitioner is objecting to the informal probate procedure; and
 3. An assertion that petitioner is seeking informal resolution in good faith.
- D. If the Tribal Court finds good cause for issuing an order granting the request for informal resolution, then the petitioner shall serve such order upon each known heir, devisee, creditor and/or other party with a legal interest in decedent's estate, along with a copy of the petition for initiation of informal resolution procedure.
- E. The parties to the informal resolution procedure shall, if possible, draft and sign a settlement agreement that states the shares of decedent's estate for each heir or devisee, and submit the original to Tribal Court for approval.
- F. The formal probate procedure in Section 8.06.030 shall be triggered if, after sixty (60) days after initiating the informal resolution procedure or one hundred twenty (120) days after initiating informal probate procedure, whichever is later, no settlement agreement has been submitted to the Tribal Court.

(Res. No. 10-24A, 1-1-10)

8.06.030 Formal probate procedure.

- A. The Tribal Court shall initiate formal probate procedure when the informal probate procedure and informal resolution procedure fail to produce a comprehensive settlement between all interested parties.
- B. If, after sixty (60) days from the initiation of informal resolution proceedings or one hundred twenty (120) from the initiation of informal probate proceedings, the Tribal Court has not approved a final settlement, it shall set a date for formal probate proceedings and provide notice to all interested parties.
- C. In any contested probate matter coming before the Tribal Court the contesting party shall have the burden of proof.

(Res. No. 10-24A, 1-1-10)

8.06.040 Collection of decedent's personal property by affidavit.

- A. A person claiming to be the rightful successor to personal property in a decedent's estate need not obtain a Tribal Court probate order to obtain the decedent's personal property, but instead can obtain the decedent's personal property by way of an affidavit filed with the Tribal Court if:
1. The value of all the person property in the decedent's estate is thirty thousand dollars (\$30,000.00) or less;
 2. Thirty (30) days have passed since the decedent died;
 3. No request for the appointment of a personal representative or executor is pending or was granted in any court having jurisdiction;
 4. The person claiming the personal property may accept payment or delivery of the personal property. In order to obtain the personal property of the decedent by way of affidavit the rightful successor must provide written testimony of and swear and affirm to items (A)(1) through (A)(4) of this section. Also, the rightful successor must attach a copy of the decedent's death certificate to the affidavit. In addition, the rightful successor must state five through seven of this section in his affidavit:
 5. The name of the decedent and the date of his birth;
 6. The name of the rightful successor and the rightful successor's relationship to the decedent;
 7. In the event that any person or entity later asserts that another is the rightful successor to the personal property of the decedent, the individual asserting must submit an affidavit declaring, "...I am receiving hereunder, I agree to indemnify and hold harmless the person or entity issuing personal property to me pursuant to this affidavit."
- B. If there is more than one rightful successor to the personal property of the decedent's estate, each rightful successor must submit his or her own affidavit stating the percentage of the personal property entitled to under this section. If the personal property is not of the type that can be split into shares, the parties cannot proceed by affidavit, but must proceed by other means outlined in this code.

(Res. No. 10-24A, 1-1-10)

Chapter 8.07 CLAIMS AGAINST THE ESTATE

Sections:

[8.07.010 Creditors.](#)

8.07.010 Creditors.

- A. Creditors of the decedent shall submit all claims against the estate to Tribal Court, and shall provide evidence of such claims to Tribal Court.
- B. Claims against the estate shall be paid in the following order:
1. Taxes or debts due the United States;
 2. Taxes or debts due the Tribe;
 3. Debts which, at decedent's death, are liens upon his property or any right or interest in his property, according to the priority of the;
 4. Expenses incurred while administering the decedent's estate;

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5. Expenses due to the decedent's last illness and burial;
 6. All other claims against the estate.
- C. If a creditor's claim remains unpaid after sixty (60) days from the date that the claim was filed with the Tribal Court, the creditor may seek payment in accordance with the informal resolution procedure described in Section 8.06.010 of this code.
- D. All just claims of creditors shall be paid before the distribution of property in the estate, but only after support for dependants has been paid if such support has been so ordered by the court pursuant to Section 8.07.010 of this code.

(Res. No. 10-24A, 1-1-10)